Supreme Court, U.S.
FILED
MAR 4 1991
OFFICE OF THE CLERK

No. 90-1387

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

THE SERBIAN EASTERN ORTHODOX DIOCESE FOR THE UNITED STATES OF AMERICA AND CANADA, a Religious Body, et al.,

Petitioners,

v.

ST. SAVA MISSION CORPORATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

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QUESTION PRESENTED

In 1976, after thirteen years of litigation and a 100 day trial, this Court rendered its decision in *Serbian Orthodox Church v. Milivojevich*, 426 U.S. 696 (1976), resolving in favor of the instant petitioners a dispute over the control of the institutions and assets of the Serbian Orthodox Church in this country. On remand from this Court's decision and mandate, the Illinois trial court entered its final judgment, which has since been enforced and implemented by the courts of Illinois and Pennsylvania.

The courts of California, however, have refused to accord full faith and credit to the Illinois final judgment. Instead, after twenty-seven years of litigation, the California courts have ordered another trial. This trial is to concern the validity of the findings made in the Illinois final judgment regarding respondent, a California non-profit corporation (i) which, although not a formal party to the Illinois litigation, was organized by the Church to hold title to California property as the Church's secular arm and trustee and (ii) which was specifically identified by the Illinois courts as subject to the Illinois final judgment.

This case thus presents the following question:

> Whether the California courts are entitled to make new findings pertaining to the control of California property held in trust by a secular arm of a hierarchical church, when such findings were already made in an Illinois final judgment to which full faith and credit is due.

LIST OF PARTIES

In the California courts, St. Sava Mission Corporation, a California nonprofit corporation, was the plaintiff, cross-defendant, and appellant.

The defendants, cross-complainants, and appellees below, who are the petitioners in this Court, are: The Serbian Eastern Orthodox Diocese For The United States Of America and Canada, a Religious Body, or Its Successors; The Western American Diocese Of The Serbian Orthodox Church in the United States of America and Canada, or Its Successors; The Western Region Board Of The Western American Diocese Of The Serbian Orthodox Church of the United States of America and Canada; The Right Reverend Bishop Firmilian; The Right Reverend Bishop Gregory, or his Successor; and the Right Reverend Bishop Christopher.

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In The

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THE SERBIAN EASTERN ORTHODOX DIOCESE FOR THE UNITED STATES OF AMERICA AND CANADA, a Religious Body, et al.,

Petitioners,

v.

ST. SAVA MISSION CORPORATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

The Serbian Eastern Orthodox Diocese For The United States of America and Canada ("Mother Church"), its constituent religious bodies, its Bishops, and its lay members respectfully petition for a Writ of Certiorari to review the judgment of the Court of Appeal of the State of California, Third Appellate District.

OPINIONS BELOW

The opinion and judgment of the Court of Appeal of the State of California, Third Appellate District, is reported at 273 Cal. Rept. 340 and is set forth in Appendix

A. The order of the Court of Appeal, modifying its opinion and judgment, is set forth in Appendix B. The order of the Supreme Court of California denying petitioners' petition for review is set forth in Appendix C.

JURISDICTION

The judgment of the California Court of Appeal of the State of California, Third Appellate District, was filed on September 19, 1990 and thereafter modified on October 15, 1990. Subsequently, on December 12, 1990, the Supreme Court of California denied a petition for review. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

The constitutional provisions involved in this case are:

1. Article IV, Section 1 of the United States Constitution, which provides:

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

2. The First Amendment to the United States Constitution, which provides in pertinent part:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ."

3. The Fourteenth Amendment to the United States Constitution, which has long been interpreted to make the limitations of the First Amendment applicable to State action, and which provides in pertinent part:

> ". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. . . ."

STATEMENT OF THE CASE

A. Nature of the Action.

This case invokes the doctrines of full faith and credit and res judicata in a most compelling context. At issue is whether the courts of California must recognize and enforce adjudications in this litigation, which has traveled once to this Court and twice to the Illinois Supreme Court during its 27-year course. The adjudications in question concern the manner in which respondent St. Sava Mission Corporation holds title to 173 acres of land in Jackson, California (the "Jackson property"), which it acquired from an Illinois holding corporation of the Mother Church.

This litigation began in 1963, after a schism arose when the Mother Church reorganized its American-Canadian Diocese and defrocked Dionisije Milivojevich ("Dionisije") as the Bishop. The litigation pitted those who remained loyal to the Mother Church against Dionisije and his supporters

in a nationwide dispute over control of the institutions and assets of the Diocese. The history of this religious dispute is recounted in this Court's prior decision in this case, *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976).

Following a trial lasting over 100 days, the Illinois trial court made findings, as pertinent to this California action, that St. Sava Mission Corporation ("St. Sava") and its counterpart holding corporations in Pennsylvania and Illinois are secular arms of the Diocese, and that the properties transferred to these holding corporations are impressed with a trust arising under Illinois law. The trial court decree was appealed to the Illinois Supreme Court and ultimately to this Court, which resolved in favor of the supporters of the Mother Church (petitioners herein) all issues bearing on what this Court described as the "dispute . . . over control of the Serbian Eastern Orthodox Diocese for the United States of America and Canada (American-Canadian Diocese), its property and assets." Within its decision, this Court identified St. Sava as a secular property-holding corporation of the Diocese, consistent with the finding of the Illinois trial court.

On remand from this Court, the Illinois trial court entered a final judgment in 1978 which restated the findings concerning St. Sava and the Jackson property and awarded control of the Diocese, its institutions, and assets (including the Jackson property) to the officials appointed by the Mother Church. Dionisije and his followers (the schismatics) appealed once again to the Illinois Supreme Court, complaining that the trial court had exceeded its jurisdiction by determining that diocesan properties transferred to St. Sava and other holding corporations were impressed with a trust in favor of members of the Diocese. The Illinois Supreme Court rejected this jurisdic-

tional challenge, ruling that the findings concerning St. Sava and the other holding corporations were appropriate in the special circumstances of this litigation. *Serbian Eastern Orthodox Diocese v. Milivojevich*, 74 Ill.2d 574 (1979).

When the Mother Church officials recorded the Illinois Supreme Court decree in California, the schismatics commenced this California action in St. Sava's name, contending that St. Sava is an "autonomous" organization which no longer holds the Jackson property in trust for members of the Diocese. The supporters of the Mother Church, now restored to control of the Diocese, responded with a cross-complaint seeking recognition and enforcement of the Illinois final judgment. Presented with cross-motions for summary judgment, the California trial court determined that the Illinois final judgment is binding on St. Sava under the Full Faith and Credit Clause of the Constitution and principles of res judicata and collateral estoppel.

The California Court of Appeal, however, reversed the summary judgment in favor of the Diocese, holding that the Illinois final judgment cannot bind St. Sava unless it is shown that "St. Sava's interest was actually and efficiently represented by a party to the [Illinois] proceedings." (App. A at pp. 2, 28.) The Court of Appeal defined that "interest" as "St. Sava's claim to ownership of the Jackson property independent of the Diocese." (App. A at p. 24.) The Court of Appeal acknowledged that Dionisije did, indeed, tender that very claim in his final appeal to the Illinois Supreme Court, but concluded that the tender was too late to be effective. (*Ibid.*)

B. Background of the Mother Church.

The Mother Church is an ancient, worldwide church organized on hierarchical principles, whose Patriarchal See

is in Belgrade, Yugoslavia. (CT 800, 895 ¶ 3.) Before its reorganization in 1963, the supreme religious and administrative body of the Mother Church in North America was the Serbian Eastern Orthodox Diocese for the United States of America and Canada (the "Diocese"). (CT 800-801, 896 ¶ 6.)

Dionisije was the religious and administrative head of the Diocese from 1939 to 1963. (CT 803.) In his capacity as Bishop of the Diocese, Dionisije administered all properties belonging to the Diocese and served as chief executive officer of its secular property-holding corporations. (CT 810, 897 ¶ 8.) In 1963, the Holy Assembly of Bishops removed Dionisije from office, appointed an administrator, reorganized the Diocese into three new dioceses, and ultimately appointed new bishops to succeed him. (CT 803-04, 897-98 ¶¶ 9, 12.)

C. The Course of the Illinois Litigation.

Despite being defrocked, Dionisije continued to officiate as Bishop of the Diocese and refused to relinquish administration of the Diocese to his appointed successor, Bishop Firmilian Ocokoljich ("Firmilian"). (CT 805.) In 1963, Dionisije instituted litigation in the Illinois courts in the name of two Illinois corporations that had held title to all diocesan properties, including the Jackson property until its transfer in December 1962 to St. Sava, another diocesan holding corporation. (CT 802-03, 2155.) Dionisije sought a declaration that he remained the rightful Bishop of the Diocese and sought to enjoin Firmilian and his followers from assuming control of diocesan assets, including the Jackson property. In his trial and appellate briefs, Dionisije repeatedly identified the Jackson property as one of three "religious-cultural centers" of the Diocese whose control was "in dispute" in the Illinois action. (CT 1041, 1131, 1239-41, 1311-12, 1345-47.)

Firmilian and the other Bishops appointed by the Mother Church countered with their own suit against Dionisije and many of his clerical and lay supporters, also seeking control of all diocesan property. (CT 807-08, 2161, 2170 ¶ 24.) Three of the individuals sued in the counter-action—Dionisije, Irinej Kovacevich and Todor Polich—were members of St. Sava's board of directors as well as controlling members of the Diocese's other boards and institutions. All individually-named defendants except Dionisije were dismissed from the action on the ground that they would be bound by adjudications rendered against the remaining core litigants. (CT 1094.)

The two actions were consolidated for trial. (CT 808.) The supporters of the Mother Church recorded a lis pendens on the Jackson property before commencement of trial, specifically identifying it as a diocesan trust asset subject to final disposition in the Illinois action. (CT 1081-91.) Neither the diocesan officials then in control of the Jackson property nor St. Sava protested the lis pendens during the course of trial and appeal in Illinois.

Early in the Illinois proceedings, the trial court granted summary judgment to Dionisije, accepting his argument that the decisions of the Mother Church were invalid and had no impact on his control of diocesan properties. (CT 848.) The Illinois Appellate Court reversed, holding that control of diocesan property could not be determined solely on an examination of deeds or corporate documents. *Serbian Eastern Orthodox Diocese v. Ocokoljich*, 72 Ill. App.2d 444 (1966). The court held that the properties were subject to a trust in favor of members of the Diocese regardless of the manner in which title was held, and remanded for trial to determine who were the rightful administrators of the trust. (*Id.* at p. 454; CT 848.)

The trial consumed more than 100 days, culminating in a decision in 1973. (CT 862-874.) The trial court held that Dionisije's defrockment and removal from office were proper and that the properties of the Diocese in Jackson, California, Libertyville, Illinois, and Shadeland, Pennsylvania were held in trust for the members of the Diocese under control of the Mother Church. (CT 870 ¶ 7.) The court further held that St. Sava and other recipients of title from the Illinois religious corporation were secular arms of the Diocese. (CT 870-71 ¶ 8.)

Dionisije appealed the findings as to his defrockment and removal but not the findings regarding the manner in which title to diocesan properties was held. The Illinois Supreme Court reversed, holding that Dionisije's removal and the reorganization of the Diocese were invalid under church law. *Serbian Eastern Orthodox Diocese v. Milivojevich*, 60 Ill.2d 477 (1975).

This Court granted certiorari. (CT 799.) Before this Court, Dionisije asserted: "This litigation concerns the control of extensive property interests of the American-Canadian Diocese of the Serbian Orthodox Church." (CT 1041.) He specifically identified the Jackson property as one of "three large religious-cultural centers" owned by the Diocese and represented that he and his followers had "been in control and possession of the Property since its acquisition." (CT 1041-42.)

This Court reversed the Illinois Supreme Court and resolved all issues in favor of those loyal to the Mother Church (petitioners here). *Serbian Orthodox Diocese v. Milivojevich*, *supra*. (CT 797.) The Court held that removal of Dionisije and reorganization of the Diocese were valid decisions of the Mother Church binding on civil courts under the First and Fourteenth Amendments and that

the officials appointed by the Mother Church were the proper administrators of the trust imposed on diocesan properties. (*Id.* at 720-724; CT 821-825.) The Court specifically recognized that its resolution of the religious dispute over Dionisije's defrockment would necessarily determine control of diocesan properties, because the Diocesan Bishop controlled the Diocese's property-holding corporations. (*Id.* at 709; CT 810.) The Court expressly identified St. Sava as one of these property-holding corporations. (*Id.* at 702; CT 803.) As the Court determined (426 U.S. at 723, n.15):

> "Indeed, the Mother Church decisions defrocking Dionisije and reorganizing the Diocese in no way change formal title to all Diocesan property, which continues to be in the respondent property-holding corporations in trust for all members of the reorganized Dioceses; only the identity of the trustees is altered by the Mother Church's ecclesiastical determinations."

On February 22, 1978, the Illinois trial court entered a Final Judgment in accordance with the mandate of this Court. (CT 894.) As pertinent here, the Illinois court found and ordered that (1) all diocesan properties acquired in the name of the Illinois religious corporation and then transferred to the Diocese's other holding corporations, including St. Sava,[1] are impressed with a trust in favor of members of the Diocese; (2) St. Sava and the other holding corporations are secular arms of the Diocese; (3) Bishop Firmilian and his successors are entitled to hold in trust and administer the diocesan properties, including the property held by St. Sava; and (4) Dionisije and all

[1] The Final Judgment refers to St. Sava as the "Jackson Corporation". (CT 896-98, 901.) St. Sava's own leaders referred to the corporation by this name or, more simply, as the "California corporation," in the Illinois proceedings. (*E.g.*, CT 925, 1221.)

persons and corporations acting with him must turn over control and management of the diocesan properties to Bishop Firmilian. (CT 896-902 ¶¶ 7, 8, 15(iii), 20, 22.)

Dionisije appealed once again to the Illinois Supreme Court, asserting that the Jackson property was not a diocesan trust asset after all, and that the trial court had "exceeded its jurisdiction" by entering relief against St. Sava because it was not named as a party. The Illinois Supreme Court expressly rejected these arguments and affirmed the Final Judgment in its entirety. *Serbian Orthodox Diocese v. Milivojevich*, 74 Ill.2d 574, 579-80 (1979) (CT 907, 912-914). This Court thereafter denied Dionisije's petition for writ of certiorari. (443 U.S. 904.)

D. Commencement of the Present Action.

St. Sava commenced this action in 1980 in Amador County, California seeking to quiet title to the Jackson property based on allegations that it is an "autonomous" organization which holds the Jackson property free from any trust in favor of the Diocese. (CT 1, 206.) After obtaining a change of venue to Sacramento County, the Diocese (which had been restored to a supporter of the Mother Church) filed a cross-complaint seeking recognition and enforcement of this Court's mandate and the Illinois final judgment. (CT 221, 1664.)

Both sides moved for summary judgment. The Diocese's motion asserted that St. Sava's claims were barred by the Full Faith and Credit Clause of Article IV, Section 1 of the United States Constitution and by principles of res judicata and collateral estoppel, because the Illinois final judgment had conclusively determined that St. Sava was a secular arm of the Diocese holding title to the Jackson property in trust for the members of the Diocese.

(CT 1509-55.) St. Sava's counter-motion sought determinations, *inter alia*, that the Illinois courts did not intend to adjudicate control of the Jackson property and that, as a non-party to the former action, St. Sava could not be bound by the final judgment. (CT 1925.) In granting the Diocese's motion for change of venue, the Court of Appeal identified the legal question presented by St. Sava's contentions:

> "It is indeed significant that St. Sava's claim to the real property is dependent upon the question of whether it has the legal capacity to hold title to real property independent from that of a trustee for the church."

After extensive briefing and argument, the trial court granted the Diocese's motion and denied St. Sava's cross-motion, holding that the Illinois courts had conclusively adjudicated that St. Sava was a secular arm of the Diocese holding title to the Jackson property in trust for the benefit of the Diocese. The trial court held these adjudications to be binding and enforceable in California pursuant to the Full Faith and Credit Clause and the doctrines of res judicata and collateral estoppel, and ordered St. Sava to relinquish to the Diocese either management of its corporate affairs or title to the property. (CT 2732-2735.) The court subsequently denied St. Sava's motion for new trial. (CT 2895.)

E. Evidence of St. Sava's Status as a Secular Arm and Holding Corporation of the Diocese.

As this Court itself observed in its 1976 decision in this case, the practice of the Diocese was to acquire and hold its assets through subordinate bodies, "secular property-holding corporations." *Serbian Orthodox Diocese v. Milivojevich*, *supra*, 426 U.S. at 702. (CT 803; see CT 1722 ¶ 5.)

One of the first such corporations formed was an Illinois corporation bearing the same name as the Diocese but generally referred to as "the Illinois religious corporation." (CT 895 ¶ 2, CT 1722 ¶ 5.) Similar secular property-holding corporations were subsequently formed by the Diocese in Pennsylvania, New York and California. (CT 1722 ¶ 5.) The Bishop of the Diocese held control over each property-holding corporation as its chief executive officer. *Serbian Orthodox Diocese v. Milivojevich*, *supra*, 426 U.S. at 709, 720. (CT 810, 821.)

After a prolonged search by its Diocesan Western Region Board, the Diocese in 1961 selected the 173-acre parcel in Jackson, California, at issue here, to serve as the new diocesan center for the western states. (CT 1722-24 ¶¶ 6-7, CT 1673 ¶ 7.) Dionisije and his Vicar-General of the Diocesan Western Region, Reverend Mrvichin, traveled to Jackson in May 1961 to purchase the property. (CT 1725, ¶ 10.) Title was temporarily placed in the Diocese's Illinois religious corporation until a local nonprofit corporation could be formed to hold title. (CT 1725-28 ¶¶ 10, 15; CT 1678 ¶ 18.) St. Sava was incorporated for that purpose by Dionisije and his Vicar Bishop, Reverend Mrvichin, on July 2, 1962. (CT 1678 ¶ 18; CT 1728-29 ¶ 16; CT 1778-83.) As this Court accordingly recognized, St. Sava was organized as one of the Diocese's "secular property-holding corporations." *Serbian Orthodox Diocese v. Milivojevich*, *supra*, 426 U.S. at 702. (CT 803.)

The incorporators of St. Sava appointed by Dionisije were all officials of the Diocese, none of whom resided in Jackson. (CT 1730 ¶ 17.) Dionisije also appointed St. Sava's board of directors, naming himself, Reverend Mrvichin, Irinej Kovacevich, and the five members of the Diocesan Western Region Board as its eight members. (CT 1678 ¶ 18; CT 1724-30 ¶¶ 8, 16, 17.) The very name selected

by Dionisije for the new corporation underscored its subordinate position and purpose within the Diocese: "St. Sava Church And Educational Mission Of The Serbian Eastern Orthodox Diocese For The United States Of America And Canada." (CT 1778.)[2]

St. Sava's articles of incorporation also placed it under the Diocese's direction and control. Thus, Article II(A)(2) provided that St. Sava was formed for the purpose of promoting "activities commensurate and consistent with the ideals and teachings of the Serbian Eastern Orthodox faith, *and shall be in such matters under the direction of the Serbian Orthodox Diocese of the United States and Canada* . . . ." (CT 1778.) Article VII provided that St. Sava was to have no members *other* than the persons comprising its board of directors "unless and until otherwise provided by its by-laws." (CT 1781.) Article VI, in turn, provided that St. Sava could only adopt by-laws "*in accordance with Diocese regulations.*" (CT 1781.) St. Sava's "membership" was thus restricted to the diocesan officials Dionisije appointed to its board. (CT 1730 ¶ 17.)

The Jackson property was formally dedicated and consecrated as the new diocesan center for the West in a religious ceremony conducted by Dionisije and attended by the clergy and members of the Diocesan Council, the chief secular governing body of the Diocese. (CT 1674 ¶ 19; CT 1726-27 ¶ 12.) Dionisije and Reverend Mrvichin transferred title to the Jackson property from the Illinois religious corporation into St. Sava on December 4, 1962. (CT 1730 ¶ 19; CT 1785-93.)

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[2] The name now used, "St. Sava Mission Corporation", was adopted by Dionisije's supporters *after* the 1973 Illinois trial court determined that St. Sava is a secular arm of the Diocese. (CT 2070.)

From the onset of the schism in 1963 through the 1973 trial in Illinois, the president of St. Sava's board of directors was Irinej Kovacevich ("Irinej"), former administrator of the diocesan center in Pennsylvania and Dionisije's chief deputy. (CT 1221.) In December 1963, shortly after the schism, Dionisije conferred the additional title of Vicar Bishop of the Diocese upon Irinej, who succeeded Reverend Mrvichin. (CT 1939 ¶ 2.) Irinej ultimately succeeded Dionisije as leader of the schismatics upon the latter's death in 1979, and Irinej continues to act in that capacity today as the self-appointed bishop of the "Free Serbian Orthodox Diocese." (CT 1939 ¶ 2.) During the Illinois litigation, Irinej was Dionisije's chief supporter and confidante, attending briefings with Dionisije's Illinois attorneys (CT 2408, 2411-12, 2430, 2436, 2507-09) and exhorting the schismatics to "leave our ranks and go to the other side" if they questioned Dionisije's litigation tactics. (CT 2507-09.) On numerous occasions after transfer of title to St. Sava, Irinej and other members of St. Sava's board of directors appeared before the governing institutions of the Diocese in Illinois to report on the Jackson property and its financial condition, including the reporting of and the request for approval on the financial statements of St. Sava. (CT 2404, 2411-12, 2433, 2435-36, 2446-51, 2474, 2478-81, 2483-84, 2501, 2507, 2509.) Identifying himself as "president of the Board of Directors of the California corporation [St. Sava] from 1963 to the present," Irinej testified at the 1973 Illinois trial as to improvements made to the Jackson property since May 1962. (CT 1221-22.)

Until his final appeal to the Illinois Supreme Court, Dionisije consistently represented that the Jackson property was an asset of the Diocese subject to final disposition in that litigation. (CT 1041-42, 1130-31, 1239-41, 1311-12.) He acknowledged that his followers had held "control

and possession of the property since its acquisition" and that the property was subject to a trust in favor of the members of the Diocese. (CT 1042, 1131.) He told this Court that supporters of the Mother Church (petitioners here) sought to "grab" control of the property from his followers. (CT 1311-12.)

Evidence presented below further established that, from its formation in 1962 until at least 1974, St. Sava did not function independently of the Diocesan Western Region Board. (CT 1576-1580 ¶¶ 3-7; CT 1678-79, ¶ 19; CT 1731-32, ¶ 20.) Through the date of the Illinois trial which led to the adjudications St. Sava now seeks to relitigate, no corporate meetings were held, no corporate records were maintained, and no bylaws were adopted in St. Sava's name. (CT 1576 ¶¶ 2-3; CT 1679-80 ¶ 21; CT 1731-32 ¶ 20.) Ned Vukovich, who succeeded Irinej as president of St. Sava in 1977, testified in Illinois post-judgment enforcement proceedings that, from 1962 to 1974, "[t]he offices of [St. Sava] did not really function," that income and expenses of St. Sava were commingled with those of the Diocese," and that St. Sava did not have its own bank account. (CT 940, 943-46, 957, 961.)

All of these facts are undisputed. Based on the foregoing, the trial court held St. Sava was collaterally estopped to relitigate whether the Jackson property was subject to a trust in favor of members of the Diocese, because that issue had been conclusively adjudicated in Illinois against the diocesan officials who were St. Sava's corporate principals and privies. (CT 2732-35.)

REASONS FOR GRANTING THE WRIT

By allowing St. Sava to repudiate the tactics of its diocesan leaders and privies in this litigation and to assert belated new interests inconsistent with its status as a holding corporation of the Diocese, the California courts have assured that the religious dispute over control of the assets and institutions of the Serbian Orthodox Church in this country will be prolonged indefinitely, in violation of the final pronouncements of the Illinois courts and this Court.

The nationwide impact of this litigation and its history present this Court with a unique opportunity to clarify the obligations of our state courts under the Full Faith and Credit Clause and the doctrines of res judicata and collateral estoppel. Review by this Court is accordingly appropriate, to secure uniformity of decision on issues concerning the respect to be afforded to sister state judgments and the desirability of achieving finality in prolonged litigation. Review is also essential to ensure that state courts enforce this Court's decisions and mandates.

I.

CONTRARY TO ESTABLISHED PRINCIPLES OF FULL FAITH AND CREDIT AND RES JUDICATA, THE RULING BY THE CALIFORNIA COURTS DISREGARDS THE POWER OF THE ILLINOIS COURTS TO ADJUDICATE CONTROL OVER THE JACKSON PROPERTY AND UNDERMINES THIS COURT'S MANDATE.

Rejecting St. Sava's contention to the contrary, the California Court of Appeal concluded that the Illinois courts intended to adjudicate conclusively that the Jackson property is held in trust for the Diocese. (App. A at pp. 10-13.)

Indeed, the Illinois final judgment expressly determines that St. Sava is a secular arm of the Diocese, holding title to the Jackson property in trust for members of the Diocese. (CT 896-900, ¶¶ 7, 8, 15(iii).) Dionisije attacked these findings on jurisdictional grounds in his final appeal to the Illinois Supreme Court. His argument, as paraphrased by that Court, was "that the circuit court went beyond the terms of the mandate [of the Illinois and United States Supreme Courts] . . . and exceeded its jurisdiction, in that it required two foreign corporations affiliated with the Diocese[3] to turn over their assets to the plaintiffs even though these corporations were not served with process, were not named as parties, and did not appear in the suit." *Serbian Eastern Orthodox Diocese v. Milivojevich*, *supra*, 74 Ill.2d at p. 579 (CT 912). The Illinois Supreme Court rejected this jurisdictional challenge and upheld the findings as appropriate ("not inappropriate") given the special context of the litigation. In particular, the court rejected Dionisije's attempt to change the factual premise of the litigation to contend that properties admittedly under his and his constituents' control, as to which substantial trial testimony had been adduced, were not in fact

[3] The other foreign holding corporation affected by the Illinois final judgment is St. Sava Home, which holds title to diocesan property in Shadeland, Pennsylvania. The Pennsylvania courts have summarily adjudicated that the Illinois final judgment is entitled to full faith and credit in their State and have ordered St. Sava Home to relinquish control of the Shadeland property to the Diocese. (CT 1003-1022.) Specifically, as the Pennsylvania trial court found:

> "While we sympathize with the fervor and desire of the Dionisije dissidents to escape the control of the Mother Church. . ., we find the issue to be res judicata and to be controlled by Illinois Court decisions to which we must accord full faith and credit." (*Id.*)

diocesan properties subject to final disposition in the Illinois proceedings. (*Id.* at 580-81; CT 913-14.)

While acknowledging that the Illinois courts purposefully and conclusively adjudicated the issues now in dispute, the California Court of Appeal has now concluded that St. Sava is free to attack the Illinois final judgment in California on the ground that St. Sava was an indispensable party to the former action. (App. A at pp. 29-30.) This conclusion is erroneous in two respects. First, as demonstrated above, the Illinois Supreme Court has already rejected the contention that St. Sava and its Pennsylvania counterpart, St. Sava Home, were indispensable parties. As this Court has recognized, a state court judgment is entitled to full faith and credit, even as to jurisdictional questions, when those questions have been decided in the first action. *Underwriters National Assurance Co. v. North Carolina Life & Accident & Health Insurance Guaranty Ass'n*, 455 U.S. 691, 706 (1982).

According to the California Court of Appeal, however, the Illinois Supreme Court "made no decision at all respecting jurisdiction" because Dionisije raised the issue too late for consideration on the merits. (App. A at p. 15.) This reading of the Illinois Supreme Court decision is insupportable. That Court squarely confronted and rejected Dionisije's contention that the Illinois trial court had "exceeded its jurisdiction" by making findings concerning St. Sava and the Jackson property, ruling that the findings were "not inappropriate" in view of the breadth of the litigation and the capacities of the participating litigants. *Serbian Eastern Orthodox Diocese v. Milivojevich*, *supra*, 74 Ill.2d at 579-80 (CT 912-914). Although the Illinois Supreme Court's rationale for rejecting the jurisdictional challenge was based partly on its untimeliness, the court directly passed on the issue and conscious-

ly resolved it to sustain the challenged findings concerning the "foreign corporations affiliated with the Diocese." (*Ibid.*) As this Court has recognized, a jurisdictional determination based on principles of estoppel or waiver is no less a determination on the merits than any other resolution that the Illinois Supreme Court might have reached in response to Dionisije's appeal. *Insurance Corp. v. Compagnie Des Bauxites*, 456 U.S. 694, 704 & n. 9 (1982). Thus, the courts of California are not entitled at this late date to relitigate the jurisdiction of the Illinois courts to resolve the present controversy.

Even if the Illinois courts had not already decided the question of their jurisdiction to decide this controversy, it would be improper to deny full faith and credit to the Illinois final judgment on the basis of inquiries into St. Sava's status as an "indispensable party." St. Sava is bound by that judgment under rules of preclusion which apply irrespective of whether St. Sava was before the Illinois courts by name.

The Illinois courts entertained evidence and made specific findings concerning the diocesan properties in California and other states held by what the Illinois Supreme Court called the "foreign corporations affiliated with the Diocese." As this Court has recognized, the resolution of this religious dispute over the leadership and structure of the Diocese necessarily determined control of all diocesan properties, because the Diocesan Bishop was the principal officer of and controlled each property-holding corporation, including St. Sava. *Serbian Orthodox Diocese v. Milivojevich*, *supra*, 426 U.S. at 702, 709 (CT 803, 810). Unlike the two Illinois corporations in whose names Dionisije commenced the Illinois litigation, neither St. Sava nor its Pennsylvania counterpart, St. Sava Home, were expressly named as parties to the proceedings, inasmuch as they

operated as mere secular arms of named parties to the proceedings. The trial court in the present action correctly concluded that this distinction was without significance, given St. Sava's connection to the Diocese and the Illinois litigants.

As this Court has declared:

> A fundamental precept of common-law adjudication, embodied in the related doctrines of collateral estoppel and res judicata, is that a "right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction . . . cannot be disputed in a subsequent suit between the same parties *or their privies* . . . ." Application of both doctrines is central to the purpose for which civil courts have been established, the conclusive resolution of disputes within their jurisdictions. [Citations.] To preclude parties from contesting matters that they have had a full and fair opportunity to litigate protects their adversaries from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions.

Montana v. United States, 440 U.S. 147, 153 (1979) (emphasis added).

The findings made by the Illinois courts concerning St. Sava and the Jackson property were no accident. They resulted from a lengthy trial in 1973 which included testimony from the president of St. Sava's board of directors. The trial was followed by an appellate process culminating in a decision by this Court. Upon remand, the Illinois Supreme Court issued its mandate to the Illinois trial court to enter final judgment pursuant to this Court's decision. The trial court did so, restating its findings concerning the trust imposed on the Jackson property and the other diocesan assets. Dionisije appealed once again to the Illi-

nois Supreme Court, asserting in this final appeal that the trial court lacked jurisdiction to determine issues concerning the diocesan centers in other states. The Illinois Supreme Court rejected this jurisdictional challenge and affirmed the final judgment in its entirety, without any qualifying or limiting language.

Illinois courts have long recognized their power to affect land in other states through their judgments when they have before them the persons who actually control the properties.[4] At the Illinois trial, Irinej testified he was the head of both foreign holding corporations (St. Sava and St. Sava Home). (CT 1220-21.) Indeed, Irinej was St. Sava's president from the inception of the schism in 1963 through the date of his appearance at the Illinois trial a decade later, where he was the principal witness on matters concerning the Jackson property. (CT 1221-22.) Dionisije had not only appointed Irinej to head St. Sava during this period but had also conferred upon him the title of Vicar Bishop of the Diocese. (CT 1939 ¶ 2.) Irinej himself was a named party to the Illinois proceedings until dismissed as unnecessary because he would be bound in any event. (CT 1094.) Long after title to the Jackson property had been transferred from the Illinois religious corporation to St. Sava, and until after the defeat in the United States Supreme Court, Irinej and Dionisije continued to preside over the diocesan boards and committees which actually administered the property. (*E.g.*, CT 2404, 2433-36, 2446-2451, 2473-80, 2484, 2509-10.)

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[4] *E.g.*, *Miller v. Miller*, 108 Ill. App. 3d 63 (1982). California courts are in accord with this rule. (*E.g.*, *Rozan v. Rozan*, 49 Cal. 2d 322, 330-331 (1957); *Mills v. Mills*, 147 Cal. App. 2d 107, 116 (1956).)

Dionisije's control over St. Sava extended beyond the installation of his chief deputy and Vicar Bishop as president of its board of directors. St. Sava's corporate activities and membership were expressly subjected to diocesan control by its articles of incorporation. Thus, article II(A)(2) provided that St. Sava was formed to promote activities commensurate with the ideals and teachings of the Serbian Orthodox faith and was to be "in such matters under the direction of the Serbian Orthodox Diocese of the United States and Canada." (CT 1778.) St. Sava was forbidden by its articles of incorporation from admitting any members other than the eight diocesan officials appointed to its board by the Bishop "unless and until otherwise provided by the by-laws," and by-laws could only be adopted "in accordance with Diocese regulations." (CT 1781, arts. VI, VII.)

In short, the real parties in interest were before the Illinois courts. The nonjoinder of St. Sava did not deprive those courts of their ability to resolve issues concerning the Jackson property—issues that were deliberately submitted by the diocesan officials who then controlled the property and St. Sava.

II.

A DECISION BY THIS COURT IS NECESSARY TO CLARIFY THE LIMITED SCOPE OF REVIEW AVAILABLE TO STATE COURTS IN THE ENFORCEMENT OF SISTER STATE JUDGMENTS UNDER THE FULL FAITH AND CREDIT CLAUSE.

In this case, the California Court of Appeal has determined that the enforceability of the Illinois final judgment should not have been summarily adjudicated by the trial court. Rather, the Court of Appeal found a factual dispute as to whether Dionisije actually and efficiently represented St. Sava's "interest" in the Illinois litigation. The Court

of Appeal defined that "interest" as "St. Sava's claim to ownership of the Jackson property independent of the Diocese." (App. A at p. 24.)

The central fallacy in this approach is that it permits St. Sava to escape application of full faith and credit and collateral estoppel by the simple devices of disavowing the tactics of its corporate principals and redefining the nature of its "interest" in that litigation. It is immaterial that St. Sava *now* seeks to assert its independence from the Diocese and the losing faction in the Illinois proceedings. St. Sava did not manifest any such independence when control of the Diocese and its institutions and assets was being adjudicated in Illinois. The first claim of independence was made only *after* the adverse rulings by this Court. Indeed, the actions of its leaders and the records of the prior litigation leading up to the 1976 decision by this Court establish that St. Sava was a mere title-holding functionary of the Diocese whose "interests" were in no way divergent from those represented in Illinois.

The doctrines of res judicata and collateral estoppel preclude relitigation of issues actually determined in a former action, even though some factual matters or legal arguments that could have been presented in support of such issues were not presented. As this Court has emphasized:

> Simply put, the doctrine of res judicata provides that when a final judgment has been entered on the merits of a case, '[i]t is a finality as to the claim or demand in controversy, concluding parties *and those in privity with them, not only* as to every matter which was offered and received to sustain or defeat the claim or demand, *but as to any other admissible matter which might have been offered for that purpose.*'

Nevada v. United States, 463 U.S. 110, 129-130 (1983) (emphasis added).

The California Court of Appeal acknowledged that Dionisije did tender St. Sava's claim of independent ownership of the Jackson property in the Illinois proceedings. (CT 912-14; App. A at p. 24.) According to the Court of Appeal, however, the claim was submitted too late to be considered on the merits in Illinois and was therefore ineffective. This analysis is flawed. Dionisije's late submission of the claim of independent ownership was a matter of tactics. Dionisije deliberately placed the control of the Jackson and Shadeland properties in issue when he believed his faction, which then controlled the properties, would be successful in the litigation. Then, when he saw defeat, he tardily raised the contrary contention that the Jackson and Shadeland properties were not diocesan assets after all, in the guise of a jurisdictional attack on the trial court's power to award control of these properties to those persons loyal to the Mother Church. The Illinois Supreme Court properly rejected this about-face.

Tactical decisions—including the decision to withhold certain factual or legal contentions—bind parties and their privies with equal effect. *Nevada v. United States*, 463 U.S. 100, 129-30 (1983). Indeed, non-parties would never be precluded from relitigating issues decided against their privies if they could argue, as the California Court of Appeal would permit St. Sava to do here, that their representation was "inadequate" because particular factual or legal matters allegedly relevant to the issues in dispute were not tendered or were tendered belatedly by their representatives in the former action. The policies advanced by the doctrine of res judicata are not served if persons closely connected to a former suit are allowed to repudiate the tactics of their representatives and force relitigation of issues with new factual or legal arguments. *Pacific Gas & Electric Co. v. Lego*, 141 Cal. App. 3d 179, 181-83 (1983).

The California Court of Appeal attempted to circumvent these policies and this Court's mandate by characterizing Dionisije's authority to act and speak for St. Sava as a triable issue of fact. (App. A at p. 35.) This is clearly erroneous, as Dionisije was vested with that authority by operation of law. Dionisije was St. Sava's founder and controlled all appointments to its board of directors (of which he was a member) by virtue of his position as Bishop of the Diocese and chief executive officer of its holding corporations. (CT 1728-30 ¶¶ 16-17.) He installed Irinej, his chief deputy and eventual successor as leader of the schismatics, as president of St. Sava's board of directors in 1963. (CT 1727 ¶ 14.) Irinej was still serving in that capacity ten years later when he appeared as a witness in Illinois to testify concerning the Jackson property. Indeed, Irinej identified himself at the 1973 trial as "president of the Board of Directors of the California corporation from 1963 to the present." (CT 1221.)

Thus, at the very time that Dionisije was submitting the issue of the Jackson property to the Illinois courts for resolution, he and his chief deputy were St. Sava's chief executive officers. In that capacity, they had presumptive legal authority to speak for St. Sava. *Monteleone v. Southern California Vending Corp.*, 264 Cal. App. 2d 798, 806 (1968); *Sealand Investment Corp. v. Emprise, Inc.*, 190 Cal. App. 2d 305, 314 (1961). This conclusion is especially compelling because St. Sava was a closely-held corporation which had no shareholders, was subject to "Diocese regulations" in accepting new members, and never conducted any formal meetings in its own name before the 1973 trial. (CT 1576 ¶ 3; CT 1679-80 ¶ 21, CT 1731 ¶ 20.) Under the circumstances presented, St. Sava cannot rely on its own extended inactivity to avoid the actions and admissions of its corporate agents acting in its behalf in the Illinois litigation. It is simply impermissible now,

after twenty-seven years of litigation, to permit another trial on these issues, which the Illinois courts long ago resolved.

Furthermore, the California Court of Appeal would permit this relitigation on the basis of new and different theories, including the "neutral principles of law" or "formal title" doctrine. (App. A at p. 20.) This Court, however, has already rejected this doctrine as a method of resolving the dispute over control of the assets and institutions of the Serbian Orthodox Church. *Serbian Eastern Orthodox Diocese v. Milivojevich*, *supra*, 426 U.S. at 722-23 & n. 15. In its 1976 decision, this Court recognized the practical consequences of its rejection of the neutral principles doctrine:

> Resolution of the religious dispute over Dionisije's defrockment therefore determines control of the property. Thus, this case essentially involves not a church property dispute, but a religious dispute the resolution of which under our cases is for ecclesiastical and not civil tribunals.

(*Id.* at p. 709; CT 810.)

In short, the California trial court should not be required to re-try the entire controversy between these parties—let alone be allowed to consider new factual and legal theories—merely to determine the efficacy of the Illinois final judgment. Indeed, the California Court of Appeal has transgressed its role as an enforcement court under the Full Faith and Credit Clause and has "failed to recognize the limited scope of review one court may conduct to determine whether a foreign court had jurisdiction to render a challenged judgment." *Underwriters National Assurance Co. v. North Carolina Life & Accident & Health Insurance Guaranty Ass'n*, *supra*, 455 U.S. at 706. The Court of Appeal compounded its error by permitting St. Sava to second-guess the strategy of its corporate prin-

cipals and privies in this litigation—a result fundamentally at odds with the doctrines of res judicata and collateral estoppel.

CONCLUSION

This Court properly resolved all issues in this litigation in 1976. However, in light of the ruling by the California Court of Appeal refusing to implement both this Court's decision and the final judgment entered and upheld on appeal in Illinois, petitioners respectfully request that their Petition for a Writ of Certiorari be granted, so that this "Bleak House" of American litigation can now end.

Respectfully submitted,

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Dated: February 27, 1991

APPENDICES

APPENDIX A

[FILED SEPTEMBER 19, 1990]

CERTIFIED FOR PARTIAL PUBLICATION

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

ST. SAVA MISSION CORPORATION,	)	C003655
	)	
Plaintiff and Appellant,	)	(Super. Ct.
	)	No. 304981)
v.	)	
	)	
SERBIAN EASTERN ORTHODOX DIOCESE FOR THE UNITED STATES OF AMERICA AND CANADA, et al.,	)	
	)	
Defendants and Respondents.	)	

APPEAL from a judgment of the Superior Court of Sacramento County, Darrel W. Lewis, Judge. Reversed.

Fitzgerald, Abbott & Beardsley, Richard T. White, and Michael P. Walsh for Plaintiff and Appellant.

McDonough, Holland & Allen, Michael T. Fogarty, Jenner & Block, Albert E. Jenner, Jr., Robert L. Graham, Katz, Karacic & Helmin, and Thomas J. Karacic for Defendants and Respondents.

In this case, we consider a dispute that has its origins in a schism in the Serbian Eastern Orothodox Church in America—a schism that made it way to the Supreme Court of the United States. (See Serbian Orthodox Diocese v. Milivojevich (1976) 426 U.S. 696 [49 L.Ed.2d 151].)

At all relevant times St. Sava Mission Corporation ("St. Sava"), plaintiff below, has been the record owner of 173 acres of property located in Jackson, California ("the Jackson property"). Defendant Serbian Eastern Orthodox Diocese for the United States of America and Canada ("Diocese") contends it is the beneficial owner of the property and St. Sava holds title in trust for the Diocese. St. Sava disputes this claim and contends it owns the property independent of the Diocese.

The trial court granted summary judgment in favor of the Diocese. The trial court ruled an earlier judgment of an Illinois state court had concluded St. Sava held title to the Jackson property in trust for the Diocese. The trial court reasoned that, even though St. Sava was never a party to the Illinois proceedings, the Illinois judgment was entitled to full faith and credit in California and principles of res judicata barred St. Sava's claims. St. Sava appealed.

We conclude that, under Illinois law, the Illinois judgment cannot bind St. Sava unless it is shown St. Sava's interest was actually and efficiently represented by a party to the proceedings. We further conclude the record reflects a factual dispute with respect to whether St. Sava's interest was so represented. Because the record tenders a factual dispute respecting the validity of the Illinois judgment (and consequently whether it is entitled to full faith and credit in California), we will reverse the summary judgment.

FACTUAL AND PROCEDURAL BACKGROUND

The current litigation is only the latest action in a string of court battles dating back to the early 1960s, stemming from an internecine dispute with the Serbian Eastern Orthodox Church in America. In order to clarify the setting of the current lawsuit we first recount as briefly as possible the essential facts of the prior litigation.

1. *The Illinois Litigation*

The Serbian Eastern Orthodox Church ("Mother Church") is a worldwide church organized on hierarchical principles, whose Patriarchal See is located in Belgrade, Yugoslavia. Its ruling body is known as the Holy Assembly of Bishops.

From the time the Mother Church established itself in America until 1963, its supreme religious and administrative body in this country was the Diocese. The religious and administrative head of the Diocese from 1939 to 1963 was Bishop Dionisije Milivojevich ("Dionisije"). In his capacity as Bishop, Dionisije administered all properties belonging to the Diocese and served as chief executive officer of its corporations.

Dionisije's predecessor as head of the Diocese organized an Illinois religious corporation bearing the same name as the Diocese, pursuant to the Illinois Religious Corporation Act (Ill. Rev. Stat. ch. 32, para. 164 et seq. (1990)), for the purpose of holding title to certain diocesan property located in Illinois. Thereafter an Illinois not-for-profit corporation was formed, also under the Illinois Religious Corporation Act, and title to the Illinois property was transferred to that corporation. The Diocese later formed similar secular corporations to hold title to properties in

other states. St. Sava, like the Illinois not-for-profit corporation, received its title by transfer from the Illinois religious corporation. The parties to this litigation dispute whether St. Sava was formed and later existed to hold title to diocesan property in trust for the Diocese.

In 1963 the Holy Assembly of Bishops suspended Dionisije from office and reorganized the Diocese into three new dioceses. Subsequently it defrocked him, removed him from office, and appointed new bishops to succeed him.

Also in 1963, Dionisije caused a lawsuit to be filed in Illinois state court in the name of the two Illinois corporations against his appointed successor, Bishop Firmilian Ocokoljich ("Firmilian"), contending the actions of the Holy Assembly violated the constitution and laws of the Mother Church. The suit sought a declaration that Dionisije remained the rightful Bishop of the Diocese and an injunction against any interference with his control of diocesan property.

The Diocese and Firmilian also filed a lawsuit against Dionisije, the two Illinois corporations, and numerous clerical and lay supporters of Dionisije. The relief sought in the suit included control of all diocesan property. The two rival lawsuits were consolidated.

St. Sava was not named as a party nor served with process in the Illinois litigation, nor did it make an appearance. Various members of St. Sava's board of directors—including Dionisije and his chief deputy, Bishop Irinej ("Irinej")—were originally named defendants in Firmilian's suit, but the captions of the pleadings did not designate them in their corporate capacities. Moreover, all but Dionisije were dismissed from the action at an early stage.

In the course of the Illinois litigation Dionisije identified three parcels of real property as diocesan property subject to the court's deposition. One of these parcels was the Jackson property. As of 1962 (before the Illinois litigation began), title to this property was held by St. Sava.

The Illinois trial court granted summary judgment to Dionisije. The Appellate Court of Illinois reversed and remanded for trial (Serbian Eastern Orthodox Diocese v. Ocokoljich (Ill.App. 1966) 219 N.E.2d 343). On remand, the trial court held in 1973 that Dionisije's defrockment and removal from office were legal and that all diocesan properties were held in trust for the members of the Diocese. Dionisije appealed the trial court's finding as to his defrockment and removal, but not its finding as to the manner in which title to diocesan property was held. The Illinois Supreme Court reversed, concluding the proceedings against Dionisije were illegal under Church law (Serbian Eastern Orth. Diocese, etc. v. Milivojevich (Ill. 1975) 328 N.E.2d 268). The United States Supreme Court granted certiorari. ((1975) 423 U.S. 911 [46 L.Ed.2d 139].)

Before the United States Supreme Court, Dionisije stated: "This litigation concerns the control of extensive property interests of the American-Canadian Diocese of the Serbian Orthodox Church." He specifically named the Jackson property as one of "three large religious-cultural centers" owned by the Diocese and alleged that he and his followers had "been in control and possession of the property since its acquisition."

The United States Supreme Court reversed the Illinois Supreme Court on the ground that it had contravened the First and Fourteenth Amendments by improperly inquiring into matters of ecclesiastical cognizance and polity and impermissibly interfering with decisions of the highest

authority of a hierarchical church. (Serbian Orthodox Diocese v. Milivojevich, supra, 426 U.S. 696 [49 L.Ed.2d 151].) Notwithstanding that the resolution of the dispute determined the control of church property, the Court held that the dispute was religious in nature and that the civil courts must defer to the Holy Assembly's decision. (*Ibid.*)

On remand, the Illinois trial court in 1978 entered a "Final Judgment" in accordance with the holding of the United States Supreme Court. As pertinent here, the court found and ordered:

(1) The real property in California to which St. Sava held title was impressed with a trust in favor of the Diocese;

(2) St. Sava is a secular arm of the Diocese;

(3) Pending reorganization of the old Diocese into three new dioceses, Bishop Firmilian was entitled to hold in trust and administer the diocesan properties, including the property held by St. Sava;

(4) Dionisije and all persons and corporations acting with him or under his direction were ordered to turn over control and management of all diocesan property to Firmilian.

Dionisije appealed to the Illinois Supreme Court. Here he contended that the trial court exceeded its jurisdiction by requiring St. Sava to turn over its assets to the plaintiffs even though it had not been served with process, named as a party, or appeared in the suit. In addition, he contended for the first time that the Jackson property was not actually diocesan property but was controlled individually by the members of St. Sava. The court rejected these arguments and affirmed the final judgment. (Serbian Eastern Orthodox Diocese v. Milivojevich (Ill. 1979) 387 N.E.2d 285.)

As to Dionisije's contention that the final judgment improperly required St. Sava to turn over its assets to the plaintiffs, the court noted: "The ordering portion of the [final judgment] does not in terms direct . . . the California . . . corporation to turn over assets to the [Diocese]. [¶]. . . The [Diocese's] second amended and supplemental complaint does not seek relief against the foreign corporations, and we do not consider that the ordering portion of the judgment is intended to require action on their part." (Serbian Eastern Orthodox Diocese v. Milivojevich, supra, 387 N.E.2d at p. 288.)

As to the contention that the Jackson property did not belong to the Diocese, the court replied:

"So far as the findings of the court are concerned, they are not inappropriate. This case was tried and decided on the proposition that the property at stake was held in trust for the members of the Diocese subject to the control of its bishop under the provisions of the constitutions of the Serbian Orthodox Church and of the Diocese. The defendants' answer to the complaint did not assert by way of an alternative defense that the disposition of the property to which the [corporation holds] title was not subject to the directives of whoever was the legitimate bishop of the Diocese. The earlier judgment entered after trial contained the same findings as those in the judgment on remand respecting property held by the foreign [corporation]. The defendants' post-trial motion to reconsider did not challenge them. The plaintiffs state that no such challenge was made on appeal, and the defendants do not contend to the contrary. [¶] The validity of Dionisije's suspension and removal and the validity of Firmilian's appointment as administrator having been conclusively adjudicated, any claim based on Dionisije's former status as bishop was perforce extinguished. [Citation.] For the same

reason we cannot now entertain the defendants' contention that the property held by the foreign [corporation] is, under [its] constitution and bylaws, controlled individually by [its] members." (*Id.* at pp. 288-289.)

2. *The California Litigation*

In 1980, St. Sava filed a complaint in Amador County Superior Court to quiet title to real property, for slander of title, for declaratory relief, and for injunctive relief. The named defendants included the Diocese and Bishop Firmilian.

The first cause of action alleged generally that defendants wrongly claimed to hold an interest in the Jackson property, which was in fact owned solely by plaintiff.

After obtaining a change of venue to Sacramento County, the Diocese filed a cross-complaint for declaratory relief and to impose constructive trust, in which it sought recognition and enforcement of the Illinois final judgment as res judicata.

Both parties filed motions for summary judgment. The Diocese's motion asked the court to determine that St. Sava's claim was barred by the Full Faith and Credit Clause of article IV, section I of the United States Constitution and by principles of res judicata and collateral estoppel, because the Illinois final judgment had conclusively determined that St. Sava was a secular arm of the Diocese, holding title to the Jackson property in trust for the members of the Diocese. As pertinent, St. Sava's cross-motion asked the court to determine that as a nonparty to the Illinois litigation over whom the Illinois courts could not exercise jurisdiction, St. Sava could not be bound by the Illinois final judgment under the Full Faith and Credit Clause.

In support of its claim of disputed issues of material fact St. Sava introduced evidence tending to show that Dionisije surrendered control over the operation of the Jackson property to the local directors of St. Sava on June 14, 1962, before commencing the Illinois litigation, and that St. Sava operated autonomously at all times thereafter. The Diocese produced evidence tending to show that Dionisije continued to control the Jackson property throughout the Illinois litigation.

The trial court granted the Diocese's motion for summary judgment and denied St. Sava's cross-motion. In its judgment the court found, "pursuant to the Full Faith and Credit Clause of the United States Constitution and the principles of res judicata and collateral estoppel," (1) it must accord full faith and credit to the Illinois final judgment, and (2) the final judgment conclusively adjudicated that the Diocese maintained beneficial ownership of the Jackson property at all times since its acquisition and that St. Sava was a secular arm of the Diocese holding title in trust for the benefit of the Diocese. The court ordered St. Sava to transfer either title to the Jackson property or full management and control thereof to the Diocese.

St. Sava's appeal followed.

In an unpublished portion of this opinion, we reject St. Sava's contention the Illinois courts did not conclusively adjudicate that the Jackson property was held in trust for the Diocese.[1] In this published portion, we explain why factual disputes as to the validity of the Illinois judgment preclude the conclusion the judgment is entitled to full faith and credit.

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[1] Pursuant to rule 976.1 of the California Rules of Court, all portions of this opinion shall be published except part I of the Discussion.

DISCUSSION

I

The Illinois Proceedings Conclusively Determined That St. Sava Holds Title to the Jackson Property in Trust For the Benefit of the Diocese.

St. Sava contends its claims cannot be barred by the Illinois judgment because the Illinois proceedings did not conclusively adjudicate the questions of "control of St. Sava" or "title to the Jackson Property." To the extent this contention suggests that the Illinois final judgment did not determine that the Jackson property was held in trust for the Diocese, it must fail. As noted above, the Illinois trial court expressly found that the subject real property was impressed with such a trust. Dionisije raised the claim that the Jackson property was not diocesan property held in trust for the members of the Diocese but was controlled individually by the members of St. Sava on appeal to the Illinois Supreme Court from the trial court's "Final Judgment." The Illinois Supreme Court responded that the findings of the trial court were appropriate because the case had been tried and decided upon the proposition that the subject property was held in trust for the members of the Diocese. (Serbian Eastern Orthodox Diocese v. Milivojevich, supra, 387 N.E.2d at p. 288.) The court concluded it was not open to Dionisije to raise questions which were or could have been raised on the appeal from the *former* judgment (that is, the initial judgment of the Illinois Circuit Court, which determined that Dionisije's defrocking and removal from office were valid). (*Ibid.*)

St. Sava construes the Illinois Supreme Court's finding that the "Final Judgment" did not require it to take action in order to carry out the judgment as proof that the

Supreme Court intended to "[exclude] St. Sava and the Jackson Property from the ambit of the Illinois Final Judgment." Once again, St. Sava misreads the opinion of the Illinois Supreme Court. That opinion concluded only that the Illinois trial court judgment did not require St. Sava to turn over the subject property. (Serbian Eastern Orthodox Diocese v. Milivojevich, supra, 387 N.E.2d at p. 288.) The court's discussion makes clear that it left in tact (as "not inappropriate") the trial court's finding that the Jackson property was impressed with a trust for the Diocese. (*Ibid.*) Contrary to St. Sava's contention, the opinion of the Illinois Supreme Court conclusively determined that title to the Jackson property was held in trust for the Diocese. (*Ibid.*)

St. Sava further contends that events in the Illinois courts after the decision of the Illinois Supreme Court prove that the issue whether it holds title in trust was not conclusively adjudicated in Illinois. First it points to 1981 contempt proceedings in the Illinois Circuit Court.

In 1981, the Diocese initiated contempt proceedings in the Illinois trial court against numerous named individuals, including three members of St. Sava's board of directors, to enforce the final judgment. The St. Sava officers, all residents of California, objected on the ground the Illinois court lacked jurisdiction over them. Thereafter, the court dismissed the contempt proceedings as to the St. Sava officers for lack of personal jurisdiction and further found that "The disposition of the property in Jackson, California owned by the St. Sava Mission Corporation, a not-for-profit corporation of the State of California, is not before the Court." Following this action, the parties to the con-

tempt proceeding negotiated a settlement agreement, which will be discussed further below.[2]

St. Sava reads the following findings of the Illinois trial court in the contempt proceedings as an admission that the Illinois courts across the board lacked jurisdiction over St. Sava and the Jackson property: "1. *This Court* does not have jurisdiction over the persons of Ned Vukovich, Luka Milosevich or Michael Milovich [three members of St. Sava's board of directors]. [¶] 2. The disposition of the property in Jackson, California owned by the St. Sava Mission Corporation, a not-for-profit corporation of the State of California, is not before the Court." (Emphasis added.) St. Sava misconstrues the effect of the court's statements and of the contempt proceeding. As the trial court observed, the Illinois court had no power in a contempt proceeding undertaken to enforce the final judgment to overrule or vacate or in any way affect that judgment. Nor do the cited statements of the Illinois court indicate that it purported to do so. That court merely concluded it had no jurisdiction over those cited for contempt.

Next St. Sava cites the settlement agreement between the parties in Illinois following the dismissal of the contempt proceedings as to its officers, which it reads as an agreement that no claims relating to St. Sava had yet been litigated.

St. Sava's reliance on the settlement agreement is likewise misplaced. The agreement was negotiated between

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[2] The Diocese calls our attention to subsequent enforcement proceedings against followers of Dionisije in Pennsylvania, in which the trial court apparently ordered those persons to surrender title of the Diocese's property in that state to the Diocese. St. Sava responds that these proceedings are irrelevant to our decision in this case. We agree.

the parties to the Illinois contempt proceeding in October 1982, after St. Sava's lawsuit in California was filed. Its stated purpose was to resolve the issues raised *in the contempt proceeding*. The agreement specifically disclaimed any intent to affect the terms of the final judgment. Accordingly, the language in the agreement cited by St. Sava, in which the parties except from their waiver, release, and discharge of claims against each other "any claims . . . concerning the properties described in Jackson, California," cannot be construed as a stipulation that the final judgment had not litigated any claims concerning the Jackson property. In context, this language refers only to claims raised in the contempt proceeding—which, as we have already stated, had no bearing on the conclusive character of the final judgment.

II

Factual Disputes Respecting the Validity of the Illinois Judgment Preclude Entry of Summary Judgment.

A. *The Illinois courts did not determine they had jurisdiction to adjudge that St. Sava's property was held in trust for the Diocese.*

St. Sava contends the California trial court erroneously gave the Illinois final judgment full faith and credit because the Illinois trial court was without jurisdiction to adjudicate St. Sava's interest in the Jackson property.

Article IV, section 1 of the federal Constitution provides in pertinent part that, "Full faith and credit shall be given in each state to the . . . judicial proceedings of every other State." This provision generally requires every state to give to a judgment at least the res judicata effect which the judgment would be accorded in the state which ren-

dered it. (Durfee v. Duke (1963) 375 U.S. 106, 109 [11 L.Ed.2d 186, 190].)

However, "a state court judgment need not be given full faith and credit by other states as to parties or property not subject to the jurisdiction of the court that rendered it. [Citations.]" (Western Union Teleg. Co. v. Pennsylvania (1961) 368 U.S. 71, 75 [7 L.Ed.2d 139, 142-143]; Williams v. North Carolina (1944) 325 U.S. 226, 229 [89 L.Ed. 1577, 1581]; Gagnon Co., Inc., v. Nevada Desert Inn (1955) 45 Cal.2d 448, 457; Donel, Inc. v. Badalian (1978) 87 Cal.App.3d 327, 331; see Barber v. Barber (1958) 51 Cal.2d 244, 247.)

Where another state has fully and fairly litigated its jurisdiction, and has finally decided the question, a second state may not re-examine the question but must give the judgment of the first state full faith and credit. (Durfee v. Duke, supra, 375 U.S. at p. 111 [11 L.Ed.2d at p. 191]; Craig v. Superior Court (1975) 45 Cal.App.3d 675, 680.) However, where the first state has not litigated and decided the question, " 'the jurisdiction of a court rendering a judgment is open to inquiry under proper averments, when questioned in the court of another state. The party against whom the judgment is rendered is not forced to go to the state of the rendition of the judgment for relief.' " (Gagnon Co., Inc. v. Nevada Desert Inn, supra, 45 Cal.2d at p. 457.) The burden of showing the invalidity of the judgment is upon the party attacking the judgment. (Williams v. North Carolina, supra, 325 U.S. at pp. 233-234 [89 L.Ed. at p. 1584].) In the absence of a violation of federal constitutional rights, the validity and effect of a judgment of a sister state are governed by the law of the state where the judgment was rendered. (Aldrich v. Aldrich (1964) 378 U.S. 540, 543 [12 L.Ed.2d 1020, 1023]); Martin v. Martin (1970) 2 Cal.3d 752, 761, fn.

13; Gagnon Co., Inc. v. Nevada Desert Inn, supra, 45 Cal.2d at p. 453.)

The Diocese contends the issue of the Illinois trial court's jurisdiction to render its final judgment was decided in Illinois, so St. Sava cannot raise the issue here. However, a careful reading of the opinion of the Illinois Supreme Court in Serbian Eastern Orthodox Diocese v. Milivojevich, supra, 387 N.E.2d 285 reveals the contention is not well taken. The Illinois Supreme Court confronted the issue of jurisdiction only with respect to the portion of the judgment ordering Dionisije (and those acting with him) to turn over control of diocesan property and assets. (*Id.* at p. 288.) The Illinois Supreme Court resolved the jurisdictional attack by concluding the ordering portion of the judgment required no action on the part of St. Sava. (*Ibid.*) With respect to the findings now in dispute—that St. Sava's property was held in trust for the Diocese—the court made no decision at all respecting jurisdiction. Rather, the court concluded Dionisije's assertion that the Jackson property was not diocesan property was made too late. (*Ibid.*) Therefore, we do not read the opinion of the Illinois Supreme Court as reflecting either a full litigation or a decision upon which the question whether the Illinois courts had jurisdiction to determine that St. Sava's property was held in trust for the Diocese. It follows that St. Sava may attack the Illinois judgment in the courts of California.

B. *The Illinois courts had no jurisdiction over St. Sava because St. Sava was never served with summons or complaint and never appeared in the action.*

"It is now recognized that the term 'jurisdiction' does not have a single, fixed meaning, but has different meanings in different situations." (2 Witkin, Cal. Procedure (3d

ed. 1985) Jurisdiction, § 1, p. 366.) As used here, "jurisdiction" means the power of the Illinois courts to adjudicate the rights and interests of St. Sava. (See *id.* at p. 365.)

It is a rule of federal constitutional magnitude that, "A court of one state cannot directly affect or determine the title to land in another. [Citations.]" (Rozan v. Rozan (1957) 49 Cal.2d 322, 330; Fall v. Eastin (1909) 215 U.S. 1, 11 [54 L.Ed. 65, 70]; Annot., Res Judicata or Collateral Estoppel Effect, In State Where Real Property is Located, Of Foreign Decree Dealing With Such Property (1970) 32 A.L.R.3d 1330.) However, St. Sava makes no contention the Illinois judgment violated this rule. We shall therefore assume for the sake of argument it did not. We address St. Sava's assertions that the Illinois courts lacked jurisdiction over St. Sava's "person" and over its property in California.

As pertinent here, " 'Jurisdiction is acquired in one of two modes: first, as against the person of the defendant by the service of process; or, secondly, by a procedure against the property of the defendant within the [territorial] jurisdiction of the court.' " (Pennoyer v. Neff (1877) 95 U.S. 714, 724 [24 L.Ed. 565, 569, quoting from Bosewell v. Otis, 9 How. 336].)

The second kind of jurisdiction—over property located within a state—is called in rem jurisdiction. (See Hanson v. Denckla (1958) 357 U.S. 235, 246-247 [2 L.Ed.2d 1283, 1293-1294].) The Diocese concedes the Illinois courts had no in rem jurisdiction over St. Sava's California real property.

Nor did the Illinois trial courts have personal or in personam jurisdiction over St. Sava. "Even though a proper basis of personal jurisdiction is present . . . and notice is given in such manner as to satisfy the requirements

of constitutional due process . . ., jurisdiction may still not be obtained. The state, by statute, may prescribe the manner in which notice shall be given, and compliance with the statutory procedure of notice (process) may be considered jurisdictional. If it is, no jurisdiction of the person is acquired by the court in the particular action without such compliance." (2 Witkin, Cal. Procedure, op. cit. supra, Jurisdiction, § 92, p. 459.) It has long been settled under Illinois law that unless a party voluntarily appears in an action, personal jurisdiction over the party, including a corporation, is obtained only by service of summons and complaint. (Ill. Rev. Stat. ch. 110, paras. 2-203, 2-204 (1983); Janove v. Bacon (Ill. 1955) 128 N.E.2d 706, 708; Lakeview Trust & Sav. Bank v. Estrada (Ill.App. 1985) 480 N.E.2d 1312, 1323; J.C. Penney Co., Inc. v. West (Ill.App. 1983) 449 N.E.2d 188, 190; In re Adoption of Miller (Ill.App. 1982) 436 N.E.2d 611, 614-615; Cox v. General Motors Corporation (Ill.App. 1971) 267 N.E.2d 513, 515; Isaacs v. Shoreland Hotel (Ill.App. 1963) 188 N.E.2d 776, 777.) Since St. Sava was never served with summons and complaint and never appeared in the action, the Illinois courts had no personal jurisdiction over St. Sava.

The Diocese cites the following cases in support of its argument that the Illinois courts had jurisdiction to determine St. Sava held title in trust for the Diocese: MacDonald v. Dexter (Ill. 1908) 85 N.E. 209; Rozan v. Rozan, supra, 49 Cal.2d 322; Mills v. Mills (1956) 147 Cal.App.2d 107; Hicks v. Corbett (1955) 130 Cal.App.2d 87. These cases stand for the proposition that where the courts of one state have personal jurisdiction of the parties, the state may enter a decree determining the rights of the parties in real property located in another state, and the other state will give the decree full faith and credit if it does not directly affect title. (*MacDonald*, supra, 85 N.E.

at p. 211; *Rozan*, supra, at p. 331; *Mills*, supra, at p. 116; *Hicks*, supra, at p. 90.) These cases do not aid the Diocese because their rule is premised on the court's having personal jurisdiction over the parties whose rights are determined. (Taylor v. Taylor (1923) 192 Cal. 71, 76; Thatcher v. City Terrace etc. Center (1960) 181 Cal.App.2d 433, 442; Launer v. Griffen (1943) 60 Cal.App.2d 659, 666-667.) Here, as we have seen, the Illinois courts had no personal jurisdiction over St. Sava.

The Diocese also cites Sadacca v. Monhart (Ill.App. 1984) 470 N.E.2d 589, for the rule: " 'It is axiomatic that where equity has assumed and has jurisdiction for the purpose of granting equitable relief the court may determine all the issues of the case, whether legal or equitable.' [Citation.] A court acting in equity should enter a decree adjudicating all matters in controversy so as to avoid multiple litigation and to do full and complete justice. [Citation.]" (*Id.* at p. 595.) However, that rule is applicable only where a court of equity otherwise has jurisdiction. (McLeod v. Lambdin (Ill. 1961) 174 N.E.2d 869, 872.) Thus, in *Sadacca*, the parties whose rights having adjudicated were before the court. (*Sadacca*, supra, 470 N.E.2d at pp. 589-591.) *Sadacca*'s rule of judicial efficiency does not excuse a fundamental lack of personal or in rem jurisdiction.

The Diocese argues, "As the United States Supreme Court recognized, control of the diocesan centers was inextricably linked to the identity of the Bishop and the restructuring of the Diocese." To the extent this assertion suggests the United States Supreme Court ruled that the Illinois state courts had jurisdiction to determine whether the property held by St. Sava was diocesan property, the argument is not well taken. The Supreme Court said, "Resolution of the religious disputes at issue here affects the control of church property in addition to the

structure and administration of the . . . Diocese. This is because the Diocesan Bishop controls *respondent* Monastery of St. Sava and is the principal officer of *respondent* property holding corporations. Resolution of the religious dispute over Dionisije's defrockment therefore determines control of the property." (Serbian Orthodox Diocese v. Milivojevich, supra, 426 U.S. at p. 709 [49 L.Ed.2d at pp. 162-163], emphasis added.) The "respondent" Monastery and corporations were those organized under Illinois law and made parties to the litigation. (*Id.* 426 U.S. at p. 702 [49 L.Ed.2d at p. 158].) Because St. Sava was not made a party and had asserted no jurisdictional claim, the United States Supreme Court had no occasion to (and did not) address the issue. Nothing in *Serbian Orthodox Diocese* suggests the Illinois state courts had some basis for asserting jurisdiction over St. Sava other than in personam jurisdiction which ordinarily requires that a party be joined in an action by service of process.[3] (See Martin v. Wilks (1989) 490 U.S. ____, ____ [104 L.Ed.2d 835, 844], and authorities cited.)

The Diocese also asserts conclusionally that, "Any attempt to sever the 'property' issues from the more basic 'religious' issues would have violated the First Amendment." We understand this argument to suggest that the First Amendment somehow gave the Illinois courts jurisdiction to adjudicate St. Sava's rights in the Jackson property to which it held title. However, Jones v. Wolf (1979) 443 U.S. 595 [61 L.Ed.2d 775] compels rejection of the Dio-

[3] For this reason, we also reject the Diocese's assertion, unsupported by authority, that the Illinois courts had "plenary jurisdiction" to resolve in a single action both the religious dispute and the issue of ownership of St. Sava's property, even in the absence of service of process on St. Sava.

cese's argument. "The conclusion to be drawn from *Jones* v. *Wolfe*, *supra*, 443 U.S. 595, is that a state, if it so desires, may resolve disputes over church property through use of neutral principles of law without violating the First and Fourteenth Amendments. It need not adopt a rule of compulsory deference to religious authority in resolving church property disputes, even when issues of doctrinal controversy are not involved. The sources to be used to settle such disputes are the deeds to church property, the articles of incorporation of the local church, the state statutes, and the rules of the general church organization." (Protestant Episcopal Church v. Barker (1981) 115 Cal. App.3d 599, 614.) In determining issues of ownership and control of church property, California applies the "neutral principles" approach approved in Jones v. Wolf, supra. (*Ibid.*; Presbytery of Riverside v. Community Church of Palm Springs (1979) 89 Cal.App.3d 910, 920.)

At this juncture of the litigation, on the record before us, we do not see why St. Sava's claims cannot be adjudicated upon "neutral principles of law." Clearly the prolonged Illinois litigation resulted in appropriate deference to the Serbian church's decision that Firmilian, not Dionisije, was entitled to control diocesan properties. But the Diocese has not suggested why the issue tendered by St. Sava—whether its property is, in fact, a diocesan property—would necessarily require the courts to adjudicate ecclesiastical matters. The First Amendment does not require the states to adopt a rule of compulsory deference to religious authority in resolving church property disputes where no issue of doctrinal controversy is involved. (Jones v. Wolf, supra, 443 U.S. at p. 605 [601 L.Ed.2d at p. 786].) Indeed, the present dispute closely resembles the disputes over ownership of church property resulting from "schisms" that were adjudicated in Jones v. Wolf, supra,

443 U.S. 595 [61 L.Ed.2d 775], Protestant Episcopal Church v. Barker, supra, 115 Cal.App.3d 599, and Presbytery of Riverside v. Community Church of Palm Springs, supra, 89 Cal.App.3d 910.

Contrary to the Diocese's argument, the record before us does not show the adjudication of St. Sava's rights in its property by the courts of Illinois was compelled by the First Amendment. Nor does the record show the First Amendment would be violated by an adjudication in California.

We are left with the unassailable conclusion the Illinois state courts determined St. Sava held its real property in trust for the Diocese even though those courts had no in rem jurisdiction over the property and no personal jurisdiction over St. Sava. The next question is: what is the effect of this jurisdictional lacuna on the Illinois judgment? The answer is found in Illinois law requiring that an indispensable party be joined in an action.

C. *The record reflects triable issues of fact with respect to whether the Illinois judgment is void as to St. Sava because St. Sava may have been an indispensable party.*

Under Illinois law, as a general rule, "all persons must be made parties to the suit who are legally or beneficially interested in the subject matter of the litigation, and who will be affected by the judgment, so that the court may dispose of the entire controversy. [Citations.]" (Feen v. Ray (Ill. 1985) 487 N.E.2d 619, 620.) Parties who must be joined are referred to as "necessary" or "indispensable" without distinction between the two labels. (See, e.g., *id.* at p. 621; Lain v. John Hancock Mut. Life Ins. Co. (Ill.App. 1980) 398 N.E.2d 278, 283.)

In part, Illinois' indispensable party rule is grounded in due process: "It is generally accepted that, under fundamental principles of due process, a court is without jurisdiction to enter an order or judgment which affects a right or interest of someone not before the court. [Citations.]" (Feen v. Ray, supra, 487 N.E.2d at p. 620.) "The indispensable-party rule reflects a long-standing policy against affecting the rights and interests of absent parties who do not have an opportunity to protect their interests. [Citation.]" (*Id.* at p. 621.) In part, the rule is premised on judicial efficiency: joinder of indispensable parties is necessary to allow the court to dispose of a controversy in a single lawsuit. (*Id.* at p. 622.)

"A person is a necessary and indispensable party to the litigation when the person has an interest in the subject matter of the suit which may be materially affected by a judgment entered in the person's absence. [Citations.] The relevant inquiry is . . . whether the absent person might claim a substantial and present interest which determines that the person is a necessary and indispensable party. [Citations.]" (People ex rel. Sheppard v. Money (Ill. 1988) 529 N.E.2d 542, 549-550; see also Bergstrand v. Rock Island Bd. of Educ. (Ill.App. 1987) 514 N.E.2d 256, 257.)

Where a judgment affects real property, the holder of legal title is generally an indispensable party to the suit, even where title is held in trust for another. (People's Bank & Trust Co. of Rockford v. Gregory (Ill. 1932) 179 N.E. 856; Just Pants v. Bank of Ravenswood (Ill.App. 1985) 483 N.E.2d 331, 334; Bovinett v. Rollberg (Ill.App. 1979) 392 N.E.2d 27; Tri-Mor Bowl, Inc. v. Brunswick Corp. (Ill.App. 1977) 366 N.E.2d 941, 944; see Lakeview Trust & Sav. Bank v. Estrada, supra, 480 N.E.2d at p. 1327 [mortgagor].) Here, because the judgment determined

that St. Sava held title in trust for the Diocese, there can be no question that St. Sava had a substantial and present interest in the controversy sufficient to make it an indispensable party.[4]

The Illinois indispensable party rule is subject to an exception which, according to the Diocese, applies here. "The general rule is that the interest of parties not before the court in a proceeding in equity will not be bound by the decree, but it is subject to the recognized exception that where a party, though not before the court in person, is so far represented by others that his interest receives actual and efficient protection, he will be bound by representation. The doctrine of representation applies, however, only where persons are before the court who have the same interests as those of persons . . . not before the court, and who will be equally certain to bring forward the merits of such interests and give them effective protection." (Mortimore v. Bashore (Ill. 1925) 148 N.E. 317, 319; see Borrowman v. Howland (Ill.App. 1983) 457 N.E.2d 103, 107; Estate of Rosta (Ill.App. 1982) 444 N.E.2d 704, 707-708; Pioneer Processing, Inc. v. Illinois E.P.A. (Ill.App. 1982) 444 N.E.2d 211, 219, vacated on other grounds (Ill. 1984) 464 N.E.2d 238; Klingel v. Kehrer (Ill.App. 1980) 401 N.E.2d 560, 567; Moore v. McDaniel (Ill.App. 1977) 362 N.E.2d 382, 388; Phillips Petroleum v. Shutts (1985)

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[4] The Diocese argues that even though St. Sava held legal title to the subject property, it did so in trust and beneficial ownership of the property remained in the Illinois religious corporation from which St. Sava took title. This assertion goes to the heart of the dispute between the parties and essentially asks us to resolve many disputed facts discussed *post*, with respect to the conditions upon which the property was conveyed to St. Sava. In any event, under Illinois law which we have cited, the holder of legal title must be joined as a party even where it is asserted title is held in trust.

472 U.S. 797 [86 L.Ed.2d 628]; Montana v. United States (1979) 440 U.S. 147 [59 L.Ed.2d 210]; Rest.2d Judgments, §§ 41, 42.) An Illinois judgment cannot bind an otherwise indispensable party where the party does not receive actual and efficient protection of the party's interests. (Mortimer v. Bashore, supra, 148 N.E. at p. 319; Feen v. Ray, supra, 487 N.E.2d at pp. 622-623; Tri-Mor Bowl, Inc. v. Brunswick Corp., supra, 366 N.E.2d at p. 944.)

Here, the Illinois proceedings on their face fail to show that St. Sava received actual and efficient representation of its interests from Dionisije. As we have recounted, Dionisije did not tender St. Sava's claim to ownership of the Jackson property independent of the Diocese until it was too late to allow the claim to be litigated. (See Serbian Eastern Orthodox Diocese v. Milivojevich, supra, 387 N.E.2d at pp. 288-289.) The tardy tender of the claim is consistent with Dionisije's interest in the litigation. His interest was in controlling the Diocese and its assets. Until his battle for control of the Diocesan empire had been lost, he had no interest in advancing a claim that would exclude the Jackson property from the assets of the Diocese.

The Diocese asserts St. Sava should nonetheless be bound by the judgment because St. Sava was a nonfunctional corporate "shell" and the Jackson property was controlled by the Western Region Board of the Diocese, because Dionisije made all appointments to St. Sava's board of directors, and because St. Sava consented to the position taken by Dionisije in the Illinois litigation.[5] In sup-

[5] In discussing the Illinois litigation in its briefs, the Diocese refers frequently to "the Dionisije Group" or "St. Sava's legal representatives." Thus, for example, the Diocese asserts "St. Sava's

(Footnote continued on following page)

port of these positions, the Diocese adduced evidence in the trial court tending to show that between 1963 and 1975 St. Sava maintained no corporate records separate from those of the Western Region Board of the Diocese; that the Jackson property was listed as an asset of the Diocese in reports submitted to the Diocese; that plans for improvements to the Jackson property were submitted to the Diocese for approval; and that members of St. Sava's board of directors received briefings on the litigation from Dionisije's attorneys.

However, on the motion for summary judgment, St. Sava produced sufficient evidence to create triable issues of fact respecting its corporate existence and its independence from Dionisije and the position taken by him in the litigation.[6]

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[5] *continued*
legal representatives were unequivocally of the view that the Jackson Property *was* a diocesan trust asset which was subject to final disposition in [the Illinois] proceedings. Indeed, St. Sava's representatives asserted that the right to control the diocesan centers in Illinois, Pennsylvania and California was the *key* issue for determination in the litigation." (Emphasis in original.) These characterizations overlook the fact that all individual defendants except Dionisije were dismissed from Firmilian's action on September 11, 1967. Thus, the portions of the record cited by the Diocese (in support of its claim that St. Sava's "representatives" asserted diocesan control of the Jackson property) all involve proceedings occurring many years after the dismissal of the individual defendants, when only Dionisije and the two Illinois corporations were still parties.

[6] On the motion for summary judgment, each party moved to strike evidence submitted in the opposing party's declarations. The trial court failed to rule on these motions. Where evidentiary objections were made but were not ruled on by the trial court, the reviewing court must decide whether the evidence objected to is admissible, unless the objection is waived by failure to renew it on appeal. (Hayman v. Block (1986) 176 Cal.App.3d 629, 640.) St.

(Footnote continued on following page)

Thus, according to the declarations of Robert Vujovich, Sr., Nick Chabraja, and Steven Maravich, members of the Executive Board of the Diocesan Council in 1962, Dionisije purchased the Jackson property in the name of the Diocese without first obtaining the Diocesan Council's permission, and at a price beyond what the Diocese could then afford. In doing so, he exceeded his authority, because the Executive Board was solely responsible for making temporal decisions about diocesan property. At a meeting of the Executive Board on June 14, 1962, attended by all three declarants, Dionisije was directed to convey the Jackson property to the laity who had formed the California corporation. This conveyance was for fair consideration, because St. Sava assumed all financial obligations in respect to the property. The Executive Board thereafter considered the property to be under the exclusive ownership and control of St. Sava, which paid for the property and all improvements; the board no longer identified the property as a diocesan asset or participated in its management.

According to the declaration of Sophia Ducich, who attended most meetings of the Western Region Board of Diocese between 1962 and 1974, the Western Region Board was abandoned by the Diocese and by both factions in the Illinois litigation after the 1963 schism. The fact that the name "Western Region Board" continued

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[6] *continued*

Sava has not renewed its objections to the Diocese's evidence by pointing to any evidentiary errors below that may have prejudiced its position; therefore its objections are deemed waived on appeal. (*Ibid.*) The Diocese alludes to its evidentiary objections below, but fails to brief them on appeal with any specificity; accordingly these objections are also waived. We therefore presume the admissibility of all the evidence presented to the trial court in the parties' declarations.

to be used in the minutes of meetings of the St. Sava board of directors is insignificant, as this name was merely a holdover from before the schism. The fact that the same people often sat on the Western Region Board and on St. Sava's board merely reflected the fact that the most trusted and capable Serbs in the West had been selected to serve on the two separate boards, according to the declarations of Irinej, the then president of St. Sava's board of directors. According to the declaration of Ned Vukovich, St. Sava maintained its own bank account separate from that of the Western Region Board, despite some confusion and "comingling [*sic*] of financial records and activities" resulting "from the attempt by certain individuals and from a lack of managerial sophistication." In support of this assertion, a copy of a bank account book bearing the name "St. Sava Mission" with entries covering the period April 1962 through June 1964 was attached as an exhibit. As further evidence of its financial independence and corporate activity during the period of the Illinois litigation, St. Sava cites to its financial statements for the years 1968, 1971, 1972, and 1983—exhibits originally offered by the Diocese—and points out that none of them bears the name of the Diocese or otherwise mentions it.

According to the declaration of Ned Vukovich, St. Sava's board of directors affirmed throughout the Illinois litigation that St. Sava was independent of both factions in the litigation and would not align with either. This claim is supported by the declaration of Leo Sullivan, lead counsel for Dionisije's faction from 1963 through 1981, which alleges that he did not represent the interests of St. Sava or the Jackson property at any time during the Illinois litigation, that ownership and control of the Jackson property were not litigated issues at trial, and that the Diocese never sought relief against St. Sava or the Jackson property until post-trial contempt proceedings.

The Diocese also contends the president of St. Sava's board of directors, Irinej, gave testimony in the Illinois proceedings that "confirmed" Dionisije's representations that the Jackson property was an asset of the Diocese. However, the cited testimony merely states the value of improvements made to the property and identifies income received by the property; the testimony does not identify the property as a diocesan asset.

The evidence recounted above is sufficient to create a triable issue of fact on the questions whether St. Sava had a viable corporate existence, whether Dionisije somehow controlled St. Sava, or whether St. Sava consented to the position taken by Dionisije in the Illinois litigation.[7] On a motion for summary judgment, " 'The affidavits of the moving party are strictly construed and those of his opponent liberally construed, and doubts as to the propriety of summary judgment should be resolved against granting the motion.' " (Mann v. Cracchiolo (1985) 38 Cal.3d 18, 35-36, quoting Slobojan v. Western Travelers Life Ins. Co. (1969) 70 Cal.2d 432, 436-439.) The Diocese has not shown without factual dispute that Dionisije actually and efficiently represented St. Sava's interests in the Illinois litigation. (See Mortimore v. Bashore, supra, 148 N.E. at p. 319; Feen v. Ray, supra, 487 N.E.2d at pp. 622-623; Tri-Mor Bowl, Inc. v. Brunswick Corp., supra, 366 N.E.2 at p. 944.) In the instant case, the trial court's summary judgment may not be premised upon Dionisije's asserted representation of St. Sava because, "Summary judgment is properly granted only when the evidence in

[7] These triable issues of fact also preclude summary judgment on the theory, tendered by the Diocese, that a judgment against the owner of a closely-held corporation is conclusive upon the corporation. (See Rest.2d Judgments, § 59, subd. 3.)

support of the moving party establishes that there is no issue of fact to be tried. [Citations.]" (Mann v. Cracchiolo, supra, 38 Cal.3d at p. 35; Code Civ. Proc., § 437c, subd. (c).)

Since the factually conflicting state of the evidence does not allow us to conclude St. Sava received actual and efficient representation, St. Sava remains an indispensable party to the Illinois litigation. The next question is: Under the Illinois law, what consequences flow from the failure to include St. Sava as a party to the Illinois action?

The failure to join an indispensable party does not deprive the court of jurisdiction over the parties properly before it. (In re J. W. (Ill. 1981) 429 N.E.2d 501, 503.) However, a judgment entered in the absence of an indispensable party is null and void as to the non-joined party. (People v. Kerner (Ill. 1966) 219 N.E.2d 617, 620; Lakeview Trust & Sav. Bank v. Estrada, supra, 480 N.E.2d at p. 1326; Sullivan v. Merchants Property Ins. Co., etc. (Ill.App. 1979) 385 N.E.2d 897, 899.) "A defendant or unnamed party who was never served and who never appeared in the proceedings but whose rights were directly adjudicated therein may attack the judgment either directly or collaterally as void for failure to obtain jurisdiction over his person. [Citations.]" (In Interest of Vaught (Ill.App. 1981) 431 N.E.2d 1231, 1233; see City of Chicago v. Fair Employment Prac. Com'n (Ill. 1976) 357 N.E.2d 1154, 1155.)

In this case, the Illinois courts purported to adjudicate St. Sava's rights in real property to which it held title even though St. Sava was never named as a party or appeared in the action. On the motion for summary judgment, St. Sava raised a triable issue of fact with respect to whether the Illinois judgment was void as to St. Sava

because St. Sava had not been named as an indispensable party. The trial court erroneously concluded the Illinois judgment was entitled to full faith and credit in California, since a judgment that is void under the law of a sister state (for failure to join an indispensable party) is not entitled to full faith and credit in California. (Estate of Johnson (1965) 233 Cal.App.2d 785, 791; see Hanson v. Deckla, supra, 357 U.S. at p. 255 [2 L.Ed.2d at pp. 1298-1299].)

D. *The record reflects triable issues of fact with respect to whether St. Sava was "in privity" with Dionisije.*

The Diocese contends St. Sava is properly bound by the Illinois judgment because, even though St. Sava was never a party to those proceedings, St. Sava was "in privity" with Dionisije, who was a party.

Under Illinois law, "[A]n issue which has been addressed by a court of competent jurisdiction cannot be relitigated in a later action between the same parties or their privies in the same or a different cause of action." (Simcox v. Simcox (Ill. 1989) 546 N.E.2d 609, 611; see Nevada v. United States (1983) 463 U.S. 110, 135 [77 L.Ed.2d 509, 527 [same].) " 'Privity is a word which expresses the idea that as to certain matters and in certain circumstances persons who are not parties to an action but who are connected with it in their interests are affected by the judgment with reference to interests involved in the action, as if they were parties. . . .' (Restatement of Judgments, § 83, comment a, at 389 (1942).) Stated differently, a nonparty may be bound if his own interests are so closely aligned to a party's interests that the party is his virtual representative. [Citation.]" (Johnson v. Nationwide Business Forms, Inc. (Ill.App. 1981) 431 N.E.2d 1096, 1098.)

The privity rule is commonly applied to bind those who succeed to an interest in property where rights in the property have been litigated to judgment by a predecessor in interest. (See, e.g., Knodle v. Jeffrey (Ill.App. 1989) 545 N.E.2d 1017, 1024; Housing Auth. for La Salle v. YMCA of Ottawa (Ill. 1984) 461 N.E.2d 959; Rest.2d Judgments, § 43.) The successor theory of privity is not at issue here, where St. Sava held title to the Jackson property before and during the Illinois litigation. We therefore have no occasion to discuss the policy concerns underlying the doctrine of privity where the doctrine is premised upon an interest obtained by succession.

The rule of privity may also be applied where a party to a lawsuit represents a nonparty who has a concurrent interest in property that is the subject of the lawsuit. Thus, for example, in Furgatch v. Butler (Ill.App. 1988) 545 N.E.2d 140 the court concluded an owner of real property was bound by an adjudication of property rights obtained by the lessor's lessee. (P. 143.)

This theory of representation is recognized by the Restatement Second of Judgments, which has abandoned the "privity" nomenclature altogether. (See Rest.2d Judgments, § 62, com.; Montana v. United States, supra, 440 U.S. at p. 154, fn. 5 [59 L.Ed.2d at p. 217].) Thus, section 41 of that Restatement, set out in the margin,[8] states rules es-

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[8] Restatement Second of Judgments section 41 provides: "(1) A person who is not a party to an action but who is represented by a party is bound by and entitled to the benefits of a judgment as though he were a party. A person is represented by a party who is:

"(a) The trustee of an estate or interest of which the person is a beneficiary; or

"(b) Invested by the person with authority to represent him in an action; or

(Footnote continued on following page)

tablishing when a nonparty may be bound by a judgment upon the theory the nonparty's interest was represented by a party. Although couched in terms of "privity," the claim advanced by the Diocese is in effect, one premised on this theory of representation: that St. Sava was represented by Dionisije in the Illinois litigation and may be bound by the judgment as a consequence.

If a nonparty is to be bound by a judgment, upon the theory the nonparty's concurrently held interests were represented by a party, at a minimum it must be shown that the interest of the nonparty received adequate representation by the party. This is so for several reasons. First, it is a requirement of due process under the federal Constitution. (Phillips Petroleum Co. v. Shutts, supra, 472 U.S. at p. 812 [86 L.Ed.2d at p. 642]; Hansberry v. Lee (1940) 311 U.S. 32, 42-43 [85 L.Ed. 22, 27]; see Comment, *Nonparties and Preclusion by Judgment: The Privity Rule Reconsidered* (1968) 56 Cal.L.Rev. 1098, 1103.) Second, the Illinois Supreme Court has recognized privity may not be relied upon where the nonparty receives inadequate representation. (Simcox v. Simcox, supra, 546 N.E.2d at p. 611 [in marital dissolution action, children are

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[8] *continued*

"(c) The executor, administrator, guardian, conservator, or similar fiduciary manager of an interest of which the person is a beneficiary; or

"(d) An official or agency invested by law with authority to represent the person's interests; or

"(e) The representative of a class of persons similarly situated, designated as such with the approval of the court, of which the person is a member.

"(2) A person represented by a party to an action is bound by the judgment even though the person himself does not have notice of the action, is not served with process, or is not subject to service of process.

"Exceptions to this general rule are stated in § 42."

not privies of their parents because the interests of the children are not properly represented].) Third, although no Illinois case has expressly so held, we think standards of representation must be the same for purposes of indispensable-party analysis, on the one hand, and privity analysis, on the other. It would be anomalous to have an Illinois judgment declared void by indispensable-party analysis but valid by privity analysis, or vice versa. Therefore, in the present context, the test of privity is the same as that for the exception to the Illinois indispensable-party doctrine: did the nonparty receive actual and efficient representation by a party? (See, e.g., Mortimore v. Bashore, supra, 148 N.E. at p. 319; Rest.2d Judgments, § 42.)

We have previously discussed why triable issues of fact preclude summary judgment on the theory St. Sava's interests received adequate representation in the Illinois litigation. That discussion applies here and precludes summary judgment on the theory St. Sava was in privity with any party to the Illinois litigation.

E. *The record does not disclose undisputed facts sufficient to estop St. Sava from pursuing its action.*

The Diocese contends St. Sava is estopped to pursue this action upon principles set out in section 62 of the Restatement Second of Judgments, as follows:

"*Conduct Inducing Reliance on an Adjudication*

"A person not a party to an action who has a claim arising out of the transaction that was the subject of the action, and who knew about the action prior to the rendition of judgment therein, may not thereafter maintain an action on his claim against a party to the original action if:

"(1) The enforcement of the claim against that party would result in subjecting him to inconsistent obligations or in a determination of his rights and duties that is incompatible with the judgment in the original action; and

"(2) The claimant so conducted himself in relation to the original action that the party against whom the second action is brought:

"(a) Was reasonably induced to believe that the claimant would make no claim concerning the transaction or that the claimant would govern his conduct by the judgment in the original action; and

"(b) Justifiably abstained from employing procedures, such as joinder of the claimant or commencement of another action in which the claimant was made a party, that could have determined the claimant's claim."

The Diocese has cited no authority showing the courts of Illinois embrace this rule. Even assuming they do, the evidence cited by the Diocese is insufficient to support summary judgment on this theory.

The Diocese points to a notice of lis pendens filed in Amador County and giving St. Sava notice of the Illinois proceedings. However, the Diocese cites no authority for the view that the mere filing of a lis pendens in another state was sufficient to confer jurisdiction upon the Illinois courts to adjudicate the rights of St. Sava. We need not discuss whether a lis pendens might serve to bind the successor to a party properly joined in an action. In the circumstances present here, the notice afforded by the lis pendens cannot constitutionally be a substitute for service of summons and complaint because, ". . . a party seeking a judgment binding on another cannot obligate that person to intervene; he must be joined. [Citation.]"

(Martin v. Wilks, supra, 490 U.S. at p. ____ [104 L.Ed.2d at p. 845].) As we have explained, the law of Illinois prescribes joinder of a party by service of summons and complaint, not by the filing of a lis pendens.

The Diocese also asserts, "In the Illinois litigation, St. Sava's legal representatives judicially admitted that the Jackson Property was a trust asset of the Diocese and actively encouraged the Illinois courts to determine which faction of the Diocese was entitled to control this asset." However, as we have discussed (see fn. 5, *ante*), the only party to the Illinois litigation arguably qualifying as a "legal representative" of St. Sava and making these representations was Dionisije, and triable issues of fact preclude the conclusion he was authorized to speak for St. Sava.[9]

Finally the estoppel theory set out in section 62 of the Restatement Second of Judgments is by its express terms premised upon "Conduct *Inducing Reliance* on an Adjudication." (Emphasis added.) The Diocese has failed to cite any evidence in the record showing the parties to the Illinois litigation failed to join St. Sava as a party because they were "reasonably induced to believe that the claimant would make no claim concerning the transaction or that the claimant would govern his conduct by the judgment in the original action; . . ." (Rest. 2d Judgments, § 62, subd. (a).) We will not on our own motion search the voluminous record for such evidence. In the absence of such evidence it is possible to speculate that the failure to join St. Sava as a party was not the result of any conduct on St. Sava's part but rather simply reflected tactical considerations not disclosed by the record before us.

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[9] We have also pointed out how Irinej's testimony did not identify the Jackson property as an asset of the Diocese.

St. Sava cannot be bound by the judgment upon the principle of estoppel.

DISPOSITION

The judgment is reversed. Appellant shall recover costs on appeal. (*CERTIFIED FOR PARTIAL PUBLICATION.*)

SIMS, J.

We concur:

SPARKS, Acting P.J.

SCOTLAND, J.

APPENDIX B

[FILED OCTOBER 15, 1990]

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

ST. SAVA MISSION CORPORATION,	)	C003665
	)	
Plaintiff and Appellant,	)	(Super. Ct.
	)	No. 304981)
v.	)	
	)	
SERBIAN EASTERN ORTHODOX DIOCESE FOR THE UNITED STATES OF AMERICA AND CANADA, et al.,	)	
	)	
Defendants and Respondents.	)	

ORDER MODIFYING OPINION AND DENYING REHEARING

THE COURT:

It is ordered that the opinion filed herein on September 19, 1990, be modified as follows:

On page 42, delete the sentence: St. Sava cannot be bound by the judgment upon the principle of estoppel.

Substitute the following sentence for the deleted sentence:

The summary judgment cannot be upheld upon the principle of estoppel.

The petition for rehearing is denied.

SPARKS, Acting P.J.
SIMS, J.
SCOTLAND, J.

CASE TITLE:

ST. SAVA MISSION CORPORATION v. THE SERBIAN EASTERN ORTHODOX DIOCESE, etc., et al.

COURT/CASE NO:

Third Appellate District, Court of Appeal,
3 Civil No. C003665; Sac Sup Ct No. 304981

PROOF OF SERVICE
(State)

I am employed in the County of Sacramento; my business address is 555 Capitol Mall, Suite 950, Sacramento, California. I am over the age of 18 years and not a party to the foregoing action.

On October 29, 1990, I served the following documents:

PETITION FOR REVIEW

___ (by mail) on all parties in said action, in accordance with Code of Civil Procedure §1013a(3), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At McDonough, Holland & Allen, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business, in a United States mailbox in the City of Sacramento, California.

XXX (by personal delivery) by personally delivering a true copy thereof to the person(s) and at the address(es) set forth below:

THIRD APPELLATE DISTRICT
COURT OF APPEAL
by leaving 1 copy
914 Capitol Mall, Room 100
Sacramento, California 95814

HONORABLE DARREL W. LEWIS
Judge of the Superior Court
by leaving 1 copy
c/o County Clerk's Office
720 Ninth Street
Sacramento, California 95814

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 29, 1990, at Sacramento, California.

/s/ Bruce A. Menfries
Bruce A. Menfries

CASE TITLE:

ST. SAVA MISSION CORPORATION v. THE SERBIAN EASTERN ORTHODOX DIOCESE, etc., et al.

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____ (by personal delivery) by personally delivering a true copy thereof to the person(s) and at the address(es) set forth below:

RICHARD T. WHITE, ESQ.
MICHAEL P. WALSH, ESQ.
Fitzgerald, Abbott & Beardsley
1221 Broadway, 21st Floor
Oakland, California 94612-1837

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 29, 1990, at Sacramento, California.

/s/ Bryana Schroder
Bryana Schroder

APPENDIX C

[FILED DECEMBER 12, 1990]

ORDER DENYING REVIEW
AFTER JUDGMENT BY THE COURT OF APPEAL

Third Appellate District No. C003665
S018134
IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

IN BANK

ST. SAVA MISSION CORPORATION, Appellant

v.

SERBIAN EASTERN ORTHODOX DIOCESE, Etc. Et Al., Respondents

Respondents' petition for review DENIED.

LUCAS
Chief Justice

FILED
MAR 29 1991
OFFICE OF THE CLERK

No. 90-1387

In The

Supreme Court of the United States

October Term, 1990

THE SERBIAN EASTERN ORTHODOX DIOCESE FOR THE UNITED STATES OF AMERICA AND CANADA, a Religious Body, et al.,

Petitioners,

v.

ST. SAVA MISSION CORPORATION,

Respondent.

Petition For A Writ Of Certiorari To The Court Of Appeal Of The State Of California

BRIEF OF RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

This is not an appeal of "constitutional dimension" which provides this Court with "a unique opportunity to clarify the obligations of our state courts under the Full Faith And Credit Clause and the doctrines of res judicata and collateral estoppel" as suggested by petitioners (Petition For Writ of Certiorari, p.16). Instead, this is merely an appeal of a garden variety summary judgment where the California Court of Appeal thoroughly reviewed the extensive record presented to the trial court when the trial court admitted it had failed to do so itself. Finding numerous triable issues of material fact, the Court of Appeal reversed the improper summary judgment and remanded for trial on the merits.

Thus, the question presented for review is more accurately characterized as follows:

Must the courts of California accord full faith and credit to the final adjudications of Illinois courts and this Court in a dispute over control of the institutions and assets of The Serbian Orthodox Church in this country with respect to respondent St. Sava Mission Corporation, a California nonprofit corporation, and its California real property held in fee simple (1) when the Illinois courts could exercise neither personal jurisdiction over the St. Sava nor *in rem* jurisdiction over its California real property, (2) when neither the St. Sava nor its California real property are identified in any of the pleadings in Illinois as subject to disposition in that litigation, (3) when St. Sava is not named as a party to the litigation in Illinois, (4) when St. Sava is not served with process in the Illinois litigation, (5) when St. Sava did not appear in the Illinois

QUESTION PRESENTED – Continued

litigation, (6) when St. Sava is not identified in the caption of the Illinois pleadings as being represented by any named party to the litigation in Illinois as appearing in a disclosed and representative capacity on its behalf, (7) when the only interests of Bishop Dionisije, the one individual party appearing in Illinois with whom petitioners claim St. Sava is in privity and who is claimed to have actually and efficiently represented St. Sava's interests, were not to assert St. Sava's autonomy in Illinois but instead were to retain his position as bishop and to keep his diocesan structure intact, and (8) when the interests of St. Sava to establish its continued independence and autonomy from petitioners, which interests are claimed to have been actually and efficiently represented in Illinois, were not even raised for the first time until his fourth and final appeal, well after it was too late for substantive consideration on the merits?

The Court of Appeal correctly held that St. Sava was an absent indispensable party to the litigation in Illinois and that many issues of disputed material facts precluded, as a matter of law, a finding on a motion for summary judgment that the interests of St. Sava were actually and efficiently represented in Illinois by Bishop Dionisije.

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STATEMENT OF THE CASE

A reading of petitioners' Petition For Writ of Certiorari ("Petition") may result in the erroneous conclusion that this appeal follows a full trial on the merits in which every major factual issue was subject to conflicting evidence. It does not. Instead, this appeal is from a garden variety summary judgment on the limited issue of "privity" in an action in California to enforce a judgment issued in Illinois.

St. Sava submits that the California Court of Appeal was correct in holding that it was an absent indispensable party to the litigation in Illinois. St. Sava further submits that the California Court of Appeal was correct in deciding that the presence of many issues of disputed material facts precluded, as a matter of law, a finding on a motion for summary judgment that the interests of St. Sava to establish its continued separateness and autonomy from the Serbian Eastern Orthodox Dioceses were actually and efficiently represented in Illinois by Bishop Dionisije, whose only material interests were to save his job as bishop and to keep his diocesan structure intact. Since there exist no special or important reasons for review under Rule 10, the Petition For Writ of Certiorari should be denied.

A. Definition of Terms

For purposes of brevity and clarity throughout this Brief, the terms listed below shall have the following meanings unless otherwise indicated in the body of this Opposition Brief:

1. "St. Sava" shall mean respondent St. Sava Mission Corporation, formerly known as St. Sava Church and Educational Mission of The Serbian Orthodox Diocese for the United States of America and Canada;

2. "Jackson Property" shall mean approximately 173 acres of real property located in Amador County, California, legal and beneficial title to which is held exclusively in the name of St. Sava;

3. "Mother Church" shall mean petitioners, The Serbian Eastern Orthodox Church in the United States of America and Canada, a religious body, as well as The Serbian Eastern Orthodox Church whose Patriarchal See is located in Belgrade, Yugoslavia;

4. "Diocese" shall mean petitioners Western American Diocese, Mid-Western American Diocese, Eastern American and Canadian Diocese, as well as their predecessor prior to reorganization in 1963, the Serbian Eastern Orthodox Diocese for the United States of American and Canada;

5. "Illinois Trial Court" shall mean the Circuit Court of the Nineteenth Judicial District, Lake County, Illinois, and The Circuit Court of Lake County, Illinois, County Department, Chancery Division;

6. "Illinois Litigation" shall mean the matter entitled *The Serbian Eastern Orthodox Diocese of the United States of America and Canada, a religious body, et al. v. Dionisije Milivojevich, et al.*, Action No. 63-1644 Consolidated with Action No. 63-2312, which was litigated in the Illinois Trial Court;

7. "Illinois Final Judgment" shall mean the Final Judgment of the Illinois trial court filed February 22, 1978; and

8. "Supreme Court Decision" shall mean the June 21, 1976, decision of this Court in *Serbian Eastern Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696, 49 L.Ed.2d, 151, 96 S.Ct. 2372.

B. History of St. Sava and the Jackson Property

St. Sava submits that a review of its history and the history of the Illinois Litigation warrants the conclusion, as a matter of law, that (1) the absence of either *in personam* jurisdiction over St. Sava or *in rem* jurisdiction over the Jackson Property precludes full faith and credit recognition and enforcement of the Illinois Final Judgment, (2) St. Sava was an absent indispensable party to the Illinois Litigation and (3) the Court of Appeal was correct that the existence of numerous disputed facts relevant to the issues of privity and representation and to whether Bishop Dionisije actually and efficiently represented St. Sava's interests in Illinois precluded summary judgment in favor of petitioners.

1. Purchase of Jackson Property

Beginning in the late 1950s and continuing through the early 1960s, representatives from congregations of numerous Serbian Orthodox Churches in California and elsewhere in the West studied various locations for the

establishment of a regional center.[1] They intended this center as a church summer camp for children, as a regional meeting place for Serbian-Americans in California and throughout the West, and possibly as a retirement home location [C.T. 1902, ¶¶ 4-6; C.T. 1938, ¶ 5].[2]

Due to extraordinary fund raising efforts, the residents of Jackson and environs offered a substantial contribution contingent on the camp being located in Jackson. However, due to fears that newly arrived Serbian immigrants from Yugoslavia would be disruptive and attempt to take control of the camp from outside the area, and that communist influences in Yugoslavia would

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[1] These matters are taken mostly from the pleadings and the declarations submitted to the trial court by St. Sava on the cross-motions for summary judgment. Since, in granting summary judgment the trial court did not (1) identify any factual issues which were in material dispute (C.C.P. § 437c(g)) or (2) sustain any of petitioners' evidentiary objections (C.C.P. § 437c(c)), St. Sava is entitled to presume that the trial court found these facts to be true and supported by competent evidence. For purposes of the appeal from a summary judgment, facts presented by appellant must be accepted as true. *Cypress Grove Townhouse Project Com. v. Covenant Mutual Insurance Co.* (1987) 197 Cal.App.3d 197, 200; *Walter E. Heller Western, Inc. v. Tecrim Corp.* (1987) 196 Cal.App.3d 149, 156; *Zeilman v. County of Kern* (1985) 168 Cal.App.3d 1174, 1179.

[2] The parties' Stipulation For Use of Original Superior Court File in Lieu of Clerk's Transcript was filed on January 19, 1988. The Chronological Index For Original File in Lieu of Clerk's Transcript identifies only the first page number of each document in the record. Unless otherwise specified, the references herein to the clerk's transcript, i.e., C.T., will be to the first page of the referenced pleading or other document.

seek to exert similar control locally, the Jackson contribution was offered on the express condition that the property not be owned or controlled by the Mother Church or the Diocese, but instead by an autonomous California nonprofit corporation [C.T. 1902, ¶ 11; C.T. 1938, ¶¶ 10, 13, 15; C.T. 2211, ¶ 5].

The Jackson site was thereupon selected. Representatives of the Jackson group entered into agreements with the sellers and agreed upon a price. Just prior to the opening of escrow, however, Bishop Dionisije, the presiding religious authority on matters of doctrine and faith and the spiritual leader of the Diocese, on his own and without prior authorization from Diocesan representatives, entered into an arrangement with the sellers at a higher price and took title to the Jackson Property in the name of the Diocese by deed recorded on May 8, 1961 [C.T. 2006, Exhibit A]. These unauthorized actions of Bishop Dionisije eventually were reversed.

In 1961 and 1962, the temporal affairs of the Diocese were administered by the Diocesan Council in Chicago, a group of approximately two dozen Serbian-Americans from throughout the United States. Operating within the Diocesan Council was the Executive Board. Although the Bishop was the final authority on matters of faith, doctrine and related ecclesiastical issues, the Diocesan Council and its Executive Board constituted the final authority on all temporal matters, including the purchase of real property [C.T. 1919, 2275 and 2281, 12].

A year of protests to the Diocesan Council over the unauthorized actions of Bishop Dionisije culminated in a meeting of the Executive Board of the Diocesan Council

held on June 14, 1962, in Chicago [C.T. 1919, 2275 and 2281]. Less than two weeks earlier, and in anticipation of this meeting of the Executive Board, the Jackson group formed St. Sava as a California nonprofit corporation. St. Sava filed its Articles of Incorporation with the California Secretary of State on June 2, 1962 [C.T. 2006, Exhibit B]. Consistent with the intention to retain local autonomy and avoid temporal control by the Diocese which was headquartered near Chicago, Illinois, the Articles of Incorporation excluded any reference to California Corporations Code Sections 9203 and 9802, which provided the alternative of incorporation of a local nonprofit body subordinate to a national nonprofit body [C.T. 1902, ¶ 11 and 20; C.T. 1938, ¶ 12].

As a result of a vote taken at the June 14, 1962, meeting, the Executive Board of the Diocesan Council ordered Bishop Dionisije to convey the Jackson Property to the California group in order to relieve the Diocese of the financial burden represented by the purchase [C.T. 1938, Exhibit B and C.T. 1919, 2275 and 2281, Exhibits A and B]. In compliance with this directive of the Executive Board of the Diocesan Council, the Jackson Property was conveyed to St. Sava by Grant Deed recorded on December 4, 1962 [C.T. 2006, Exhibit C]. Of significance to the present action is the fact that both the May 8, 1961 deed from the sellers to the Diocese and the December 4, 1962 deed from the Diocese to St. Sava are conventional grant deeds whereby title to the Jackson Property was conveyed in fee and without any language in the deeds establishing a trust or a reservation of rights in favor of the grantors or in favor of any other parties.

Immediately following the conveyance of the Jackson Property to St. Sava, a building program began. St. Sava assumed all financial obligations for the property and eventually paid the full purchase price and retired the mortgage. As a result of ongoing fund raising efforts in the following years, children's dormitories, a meeting hall, a swimming pool and various other improvements were added. The Jackson Property was operated as a summer camp and regional meeting facility, and continues to operate as such to this day [C.T. 1902, ¶ 25].

2. Onset of the Schism and the Illinois Litigation

In 1963, Mother Church initiated certain actions in Yugoslavia which resulted in the defrockment and removal of Bishop Dionisije. Additionally, Mother Church reorganized what had previously been one Diocese administered by Bishop Dionisije and which covered the entire territory of the United States of America and Canada by dividing it into three regional dioceses to be administered by three new bishops [C.T. 221, ¶¶ 13-14]. As a result, Bishop Dionisije commenced the Illinois Litigation in the Illinois Trial Court, challenging the propriety of the actions by Mother Church in defrocking him and in reorganizing the administrative structure of the Diocese. Mother Church and the Diocese filed a separate action against Bishop Dionisije in the Illinois Trial Court, and the two actions were consolidated for trial [the Illinois Trial Court pleadings are located in C.T. 2006, Exhibits O-S].

In recognition of the decision of the Executive Board of the Diocesan Council on June 14, 1962, to dispose of

the Jackson Property as a Diocesan asset by conveyance to St. Sava, *neither St. Sava nor the Jackson Property were involved in the Illinois Litigation and thus St. Sava was not named as a party, was not served with process, was not mentioned in the pleadings and did not enter an appearance. Of significance is that neither control of St. Sava nor of the Jackson Property is mentioned anywhere in the pleadings in the Illinois Litigation as subject to disposition in the litigation. The captions of the Illinois pleadings confirm that none of the parties who appeared in the Illinois Litigation did so in disclosed representative capacities either on behalf of St. Sava or as persons who controlled the Jackson Property.*

In 1971, eight years after the commencement of the Illinois Litigation, plaintiffs in that action (the Diocese herein) for still unexplained reasons recorded a lis pendens with respect to the Illinois Litigation which refers to the Jackson Property [C.T. 2006, Exhibit I]. Nonetheless, although the lengthy trial was still two years away, no attempts were made to amend the Illinois pleadings to specifically name or to seek relief against St. Sava or the Jackson Property or to serve or otherwise join St. Sava as a party to the Illinois Litigation.

During the pendency of the Illinois Litigation, St. Sava continued to operate as an autonomous California nonprofit corporation [C.T. 1575 and 3013-3037]. In 1963 and 1964, adherents loyal to the Diocese following the schism withdrew from further participation in the affairs of St. Sava and discontinued all financial support [C.T. 1902, ¶¶ 14, 21 and Exhibit A]. St. Sava was not affiliated with either side of the litigation or the schism and had not been from the beginning, although some individual

members of St. Sava chose personal affiliations with one faction or the other [C.T. 1902, ¶ 14 and C.T. 2211, ¶ 2].

On March 3, 1974, St. Sava amended its Articles of Incorporation to document the change from its former to its present corporate name [C.T. 2006, Exhibit F]. No substantive changes were made by the amendment to the Articles of Incorporation in 1974.

Following decisions by the Illinois Court of Appeal in 1966 [C.T. 2006, Exhibit D] and the Illinois Supreme Court in 1975 [C.T. 2006, Exhibit E], the Illinois Litigation was appealed to this Court, which rendered a decision thereon in 1976 [426 U.S. 696, 49 L.Ed.2d 151, 96 S.Ct. 2372]. In the Supreme Court Decision, this Court ruled that the civil courts of Illinois improperly inquired into religious and ecclesiastical decisions of the Diocese and Mother Church in violation of the First Amendment to the Constitution of the United States. This Court concluded that, although civil courts may properly determine disputes concerning ownership of church property by applying neutral principles of law, civil courts may not determine the propriety of ecclesiastical questions involving matters of church faith or polity.

In 1978, upon remand the Illinois Trial Court entered the Illinois Final Judgment referring to St. Sava and the Jackson Property [C.T. 2006, Exhibit H]. On subsequent appeal to the Illinois Supreme Court in 1979, that court held that nothing in the Illinois Final Judgment of the Illinois Trial Court required action by St. Sava since neither St. Sava nor the Jackson Property were before the Illinois Trial Court and since the pleadings did not seek

relief against St. Sava or the Jackson Property [C.T. 2006, Exhibit J].

3. Initiation of Proceedings in California Trial Court

Despite the 1979 decision of the Illinois Supreme Court excluding St. Sava and the Jackson Property from the Illinois Final Judgment, Mother Church and the Diocese nevertheless initiated contempt proceedings in the Illinois Trial Court against directors of St. Sava. The Diocese alleged that the refusal of St. Sava's directors to turn over control of the Jackson Property to the Diocese constituted contempt of the Illinois Final Judgment [C.T. 1828, Exhibit A]. The Response of St. Sava representatives specifically challenged the jurisdiction of Illinois courts over St. Sava and the Jackson Property [C.T. 1828, Exhibit B]. During the pendency of the Illinois contempt proceedings, St. Sava filed herein its original Complaint to Quiet Title to Real Property, For Slander of Title, For Declaratory Relief and For Injunctive Relief on October 15, 1980 [C.T. 1], seeking to remove the cloud on its title to the Jackson Property caused by petitioners' recordation of the lis pendens in 1971 and subsequent recordation of a copy of the decision of the Illinois Supreme Court in 1979.

This quiet title action was stayed pending conclusion of the contempt proceedings in the Illinois Trial Court. Following the conduct of substantial discovery, on August 25, 1981, the Illinois Trial Court ruled (1) that it did *not* have jurisdiction over the persons of St. Sava's California directors and (2) that questions related to disposition of the Jackson Property were *not* before the

Illinois Trial Court [C.T. 1828, Exhibit C and C.T. 2006, Exhibit R]. In recognition of this ruling, the Diocese and the other parties to the Illinois Litigation finally executed an Agreement settling the Illinois Litigation [C.T. 2006, Exhibit M], which Agreement was approved by the Illinois Trial Court in its Stipulated Order of Dismissal of Petition for Rule to Show Cause which was filed in the Illinois Trial Court on October 26, 1982 [C.T. 2006, Exhibit L]. This agreement specifically excluded St. Sava and the Jackson Property from the Illinois Final Judgment issued in the Illinois Litigation.

St. Sava substituted new counsel [C.T. 218] and filed its First Amended Complaint to Quiet Title to Real Property, For Slander of Title, For Declaratory Relief and For Injunctive Relief on January 31, 1983 [C.T. 206]. The Diocese filed its Cross-Complaint for Declaratory Relief and to Impose Constructive Trust on March 15, 1983 [C.T. 221]. By its cross-complaint, the Diocese sought a determination that the Illinois Final Judgment issued in the Illinois Litigation is res judicata and therefore fully enforceable in California against St. Sava and the Jackson Property.

4. Trial Court Ruling on Summary Judgment

Petitioners and respondent filed cross-motions for summary judgment in 1987. By their motion, petitioners sought a determination under California Code of Civil Procedure § 437c that the 1978 Illinois Final Judgment is binding on respondent, a nonparty, as being in privity with the losing parties to the Illinois Litigation [C.T. 1509]. By its cross-motion, respondent St. Sava sought

determinations (1) that its status as a nonparty to the Illinois Litigation over whom Illinois courts could not exert jurisdiction precluded full faith and credit recognition of the Illinois Final Judgment in California under any circumstances, (2) that the August 25, 1981 order of the Illinois Trial Court dismissing contempt proceedings due to the lack of Illinois jurisdiction over St. Sava and the Jackson Property collaterally estops the Diocese from relitigating that issue in California, and (3) that disputed issues of material fact exist on the question whether nonparty respondent could be deemed to have been in privity with Bishop Dionisije, who was essentially the losing party in Illinois [C.T. 1925].

The cross-motions were heard on September 18, 1987. The trial court granted petitioners' motion and denied respondent's cross-motion by order dated October 19, 1987 [C.T. 2675]. Judgment By Court Under C.C.P. § 437c was entered on November 5, 1987 [C.T. 2732]. The trial court also denied respondent's motion for a new trial by order dated December 22, 1987 [C.T. 2895].

On September 19, 1990, the Court of Appeal issued its 42-page decision in which it reversed the summary judgment and remanded for a full trial on the merits [Appendix A]. On October 15, 1990, the Court of Appeal denied petitioners' petition for rehearing and modified one sentence of the opinion [Appendix B]. On December 12, 1990, the California Supreme Court denied petitioners' petition for review [Appendix C].

REASONS FOR DENYING THE WRIT

Despite the context of historically related litigation commencing 28 years ago in Illinois which eventually reached this Court, *this* appeal is of an ordinary, garden variety summary judgment. The record in the trial court was replete with disputed factual issues material to the parties' claims. When the trial court shirked its obligation under California C.C.P. § 437c to review that record, the Court of Appeal did so instead. The ensuing 42-page opinion merely reverses an erroneous summary judgment due to the presence of triable issues of material fact which precluded summary judgment as a matter of law.

The Petition For A Writ of Certiorari presents no special and important reasons for review under Rule 10, and should be denied.

I.

A REVIEW OF THE HISTORY OF THE ILLINOIS LITIGATION DEMONSTRATED THAT ST. SAVA WAS AN ABSENT INDISPENSABLE PARTY AND THAT ST. SAVA'S INTERESTS IN ESTABLISHING ITS CONTINUED AUTONOMY AND ENTITLEMENT TO RETAIN THE JACKSON PROPERTY WERE NOT ACTUALLY AND EFFICIENTLY REPRESENTED IN ILLINOIS, THEREBY PRECLUDING AS A MATTER OF LAW APPLICATION OF THE PRINCIPLES OF COLLATERAL ESTOPPEL AND RES JUDICATA.

A review of the decisions of this Court and the Illinois Supreme Court, together with a review of various orders of the Illinois Trial Court and the pleadings in the Illinois Litigation, demonstrates that St. Sava was neither a party nor in privity with any party to the Illinois Litigation and that the questions of St. Sava's autonomy

and continued entitlement to control of the Jackson Property were neither actually nor efficiently represented by any party to the Illinois Litigation.

On September 7, 1971, petitioners (plaintiffs in the Illinois Litigation) recorded a lis pendens in Amador County, California [C.T. 2006, Exhibit I].[3] The Jackson Property of St. Sava is described in an attachment which was also recorded, and the basic issues in the Illinois Litigation are highlighted therein. Of significance is the identification in the lis pendens of the twelve parties-plaintiff and twenty-one parties-defendant in action No. 63-1644 consolidated with action No. 63-2312 in the Circuit Court of Lake County, Illinois, County Department, Chancery Division. Although petitioners herein are identified as parties-litigant, St. Sava is not listed as a party-litigant and no one is identified as appearing in a disclosed or representative capacity on behalf of St. Sava.

In the two reported Illinois appellant decisions which were rendered before eventual hearing in the United States Supreme Court, *Serbian Eastern Orthodox Diocese v. Ocokoljich* (1966) 72 Ill.App.2d 444, 219 N.E.2d 343 [C.T. 2006, Exhibit D] and *Serbian Eastern Orthodox Diocese, Etc. v. Milivojevich* (1975) 60 Ill.2d 477, 328 N.E.2d 268 [C.T. 2006, Exhibit E], there is no mention of either St. Sava or the property located in Jackson, California or the interests of St. Sava to retain its autonomy and continued control of its own real property. In the latter opinion at page 269

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[3] As this Court recently held in *Martin v. Wilks* 490 U.S. ___, 104 L.Ed.2d 835, 845, 109 S.Ct. 2180 " . . . a party seeking a judgment binding on another cannot obligate that person to intervene; he must be joi..ed. [Citation.]"

[328 N.E.2d], the court identified the parties to the Illinois Litigation as follows:

"Plaintiffs:	Defendants:
Bishop Firmilian Ocokoljich	Bishop Dionisije Milivojevich
Bishop Gregory Udicki	Serbian Orthodox Monastery of St. Sava (monastery corporation)
Bishop Sava Vukovich	
Serbian Eastern Orthodox Diocese for the United States of America and and Canada (the religious body in this country)	Diocese for the United States of America and Canada (an Illinois religious corporation)"

In the ensuing decision of *Serbian Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696, 49 L.Ed.2d 151, 96 S.Ct. 2372 [C.T. 2006, Exhibit G], this Court noted that the petitioners are "Bishops Firmilian, Gregory Udicki, and Sava Vukovich, and the Serbian Eastern Orthodox Diocese for the United States of America and Canada (the religious body in this country). Respondents are Bishop Dionisije, the Serbian Orthodox Monastery of St. Sava, and the Servian Eastern Orthodox Diocese for the United States of America and Canada, an Illinois religious corporation" (pp. 156-157, 49 L.Ed.2d). St. Sava is identified on page 158 as one of several *"[s]imilar* secular property-holding corporations [which] were subsequently organized in New York, California and Pennsylvania." Although this Court makes numerous references in its opinion to *"respondent* property-holding corporations," St. Sava is not identified as one of them. None of the issues subject to resolution by this Court included non-party St. Sava's claim to autonomy and continued control of its property.

In paragraphs 1 and 2 of the February 22, 1978 Illinois Final Judgment [C.T. 2006, Exhibit H] of the Illinois Trial Court following remand by this Court, the parties-plaintiff and the parties-defendant are exactly the same as those identified by the Illinois appellate courts and this Court. St. Sava is not identified as a party either directly or through a disclosed representative. Although neither St. Sava nor the Jackson Property were before the Illinois Trial Court, either in person or through an authorized or disclosed representative in the caption of the pleadings or otherwise, and although their disposition and control are nowhere mentioned in the pleadings, reference to St. Sava is made in two paragraphs of the court's findings. In paragraphs 7 and 20, Judge Doran of the Illinois Trial Court states:

> "7. All assets, real, personal, tangible and intangible transferred by the Illinois religious corporation (and all those acting under and pursuant to its authority) were so transferred to it and the aforedescribed Illinois not-for-profit corporation, Shadeland Corporation and Jackson Corporation, subject to, and impressed with, the trust imposed upon those assets.
>
> "20. Since May 10, 1963, the administrators and bishops of the three reorganized dioceses have been the chief executive officers and agents of the Illinois religious corporation, the Illinois not-for-profit corporation, the Priests' Pension Fund, the New York Corporation, the Jackson Corporation, and the Shadeland Corporation. . . ."

The confusion engendered by Judge Doran's improper reference to nonparty St. Sava and to the Jackson Property was the subject of a further appeal to the

Illinois Supreme Court. In *Serbian Eastern Orthodox Diocese v. Milivojevich* (1979) 74 Ill.2d 574, 25 Ill. Dec. 629, 387 N.E.2d 285 [C.T. 2006, Exhibit J], the identities of parties-plaintiff and parties-defendant to the Illinois Litigation remain the same; still St. Sava is not included. On appeal, the Illinois defendants complained that the above-quoted portions of Judge Doran's findings in the trial court:

> "required two foreign corporations affiliated with the Diocese to turn over their assets to the plaintiffs even though *these corporations were not served with process, were not named as parties, and did not appear in the suit. One of these corporations is the St. Sava Church and Educational Mission* of the Serbian Eastern Orthodox Diocese for the United States and Canada, a not-for-profit corporation organized by Dionisije under the laws of California in May 1962 while he was still bishop of the Doicese. The corporation holds legal title to about 170 acres of land near Jackson, California, acquired from the Illinois religious corporation in December 1962" [387 N.E.2d at page 288; emphasis supplied].

The Illinois Supreme Court responded to this concern by noting on page 288 as follows:

> "The ordering portion of the judgment does not in terms direct . . . the California corporation to turn over assets to the plaintiffs."
>
> "The plaintiffs' second amended and supplemental complaint does not seek relief against the foreign corporations, and we do not consider that the ordering portion of the judgment is intended to require action on their part."

Thus, by this express concession of the Illinois Supreme Court, the interests of St. Sava in establishing its

continued autonomy and right to retain control over the Jackson Property were not addressed in the pleadings in Illinois and were not actually or efficiently represented by Bishop Dionisije in Illinois, and, thus, the Illinois Final Judgment was not binding on St. Sava.

II.

THE CALIFORNIA COURT OF APPEAL CORRECTLY INTERPRETED THE DECISIONS OF THIS COURT AND THE ILLINOIS SUPREME COURT

The Petition improperly suggests that this Court and Illinois Supreme Court specifically held that St. Sava was a mere title-holding functionary of Diocesan property without rights of its own. Petitioners raised the same invalid arguments in their various briefs filed with the California Court of Appeal. The Court of Appeal, however, carefully reviewed both the 1976 decision of this Court and the 1979 decision of the Illinois Supreme Court and held that petitioners' contentions are without merit.

This nonjoinder of St. Sava and the Jackson Property precludes any binding effect on St. Sava as an absent, indispensable and unrepresented party.

A. This Court's Statement That Resolution Of The Religious Disputes Also Determines Control Of The Diocesan Properties Is Limited to The Two Illinois Religious Corporations Which Were Parties To The Illinois Litigation And Which Were Incorporated Under The Hierarchical Provisions Of The Illinois Religious Corporations Act

Throughout their Petition, petitioners suggest that, since this Court held that resolution of the religious

disputes also determined control of the Diocesan properties specifically identified in the case, i.e., the properties held by the two Illinois religious corporations which were parties to the litigation, then so too must this Court's resolution of the religious disputes determine control of St. Sava and the Jackson Property. This Court's statement, however, was limited to the two Illinois religious corporations: (1) the Diocese and (2) the Illinois not-for-profit corporation, i.e., Monastery of St. Sava in Libertyville, Illinois. This Court's holding as to those parties was required by the provisions of Illinois law under which those entities were incorporated and by the provisions of the Diocesan Constitution.

This Court recognized that an:

> "Illinois not-for-profit Corporation, respondent Serbian Eastern Orthodox Diocese for the United States and Canada, [was organized] under Illinois laws governing incorporation of hierarchical religious organizations. In 1945, respondent not-for-profit monastery corporation, the Monastery of St. Sava, was organized under the same Illinois laws, and title to the Libertyville property was transferred to it." (49 L.Ed.2d at page 158.)

In footnote 9 on page 166 (49 L.Ed.2d), this Court again noted that "*respondent* corporations were organized under the provisions of the Illinois Religious Corporations Act governing the incorporation of religious societies that are subordinate parts of larger church organizations."

The relevant Illinois statutes were discussed by the Illinois Court of Appeal in *Serbian Eastern Orthodox v. Ocokoljich* (1966) 219 N.E. 2d 343, 350:

> "There are two methods of incorporating religious societies under the Illinois Religious Corporations Act; sections 35-46 inclusive of the Act provide for the incorporation of independent church organizations . . . ; and sections 46a-46k inclusive, provide for the incorporation of any church organization which is 'under the patronage, control, direction or supervision of any ecclesiastical body, diocesan, or like ecclesiastical officer . . . ' The Diocese in this country was incorporated in 1935 under the latter provisions."

Significantly, St. Sava incorporated in 1962 under California general corporation laws similar to sections 35-46 of the Illinois Act. St. Sava did not incorporate under the hierarchical provisions of California Corporations Code Sections 9203 and 9802, which are similar to the hierarchical provisions of sections 46-46k of the Illinois Act [C.T. 1902, ¶¶ 11, 20 and C.T. 1938, ¶ 12].

Discussing the relationship between those provisions for subordinate hierarchical incorporation in Illinois and the Diocesan Constitution in establishing that the Diocese and St. Sava Monastery were indeed hierarchical organizations under the Illinois Religious Corporations Act, the Illinois Court of Appeal held on page 348 (219 N.E.2d) as follows:

> "Article 156 [of the Diocesan Constitution] provides that all real estate and personal property of the St. Sava Monastery in Libertyville is supervised by the monastery's administration 'under the direct control of the Diocesan Bishop.'
>
> "The By-laws of the Serbian Orthodox Monastery of St. Sava – the not-for-profit corporation

> formed in 1945 – provide that . . . the corporation 'possesses its own property which cannot be disposed of, sold, mortgaged or otherwise conveyed by any Serbian Church authority, without the consent and approval of the Diocesan Council, headed by the Bishop and the Diocesan Church Conventions.'
>
> "Article V provides that the Diocesan Bishop, 'received as such by the Diocesan Council, by the Diocesan Church court and by the Diocesan Convention, is the supreme head of the Monastery . . . ' "

Accordingly, this Court held on page 169 (49 L.Ed.2d) that:

> "[A]though the Diocesan Bishop controls respondent Monastery of St. Sava and is the principal officer of respondent property-holding corporations, the civil courts must accept that consequence as the incidental effect of an ecclesiastical determination that is not subject to judicial abrogation, having been reached by the final church judicatory in which authority to make a decision resides."

Thus, this Court's decision on its face is limited to the two *respondent* property-holding corporations which were incorporated under the hierarchical religious incorporation laws of the State of Illinois. The California Court of Appeal herein correctly noted that, because St. Sava was not made a party and had asserted no jurisdictional claim, "the United States Supreme Court had no occasion to (and did not) address the issue" of jurisdiction over St. Sava (App. A at p. 19).

It is undisputed herein that St. Sava Mission Corporation consulted with legal counsel and was incorporated in 1962, expressly avoiding subordinate hierarchical

incorporation then available under California Corporations Code §§ 9203 and 9802. It is also undisputed that title to the Jackson Property was conveyed by grant deed without reservation of trust or other rights in petitioners or any other entity. On the motion for summary judgment, however, there was substantial dispute whether, as petitioners contend, Bishop Dionisije and Bishop Irinej "controlled" St. Sava, or as set forth in St. Sava's opposing papers, St. Sava and Jackson Property were autonomous and free of Diocesan control at all times after June 14, 1962.

On page 171 (49 L.Ed. 2d), this Court noted that "[w]hether corporate bylaws or other documents governing the individual property-holding corporations [i.e., St. Sava] may affect any desired disposition of the Diocesan property is not a question before us." As noted by the California Court of Appeal (App A at p. 20), *Presbytery of Riverside v. Community Church of Palm Springs* (1979) 89 Cal.App.3d 910 and *Protestant Episcopal Church v. Barker* (1981) 115 Cal.App.3d 599, establish the neutral principles of law in California for resolution of church property disputes which is substantively different from the law in Illinois. Application of these neutral principles of California law to the grant deed, Articles of Incorporation and other relevant documents mandate a finding of St. Sava's autonomy. Thus, this Court merely referred to the unique situation concerning hierarchical incorporation of religious organizations in Illinois in ruling that the resolution of the religious disputes also determines property disputes because the bishop controls the property held by entities so incorporated in Illinois. Such has no application to St. Sava which was incorporated under California

corporation laws entirely dissimilar to the Illinois non-profit corporation laws.

B. No Witness in the Illinois Litigation Testified as a Representative of St. Sava

Continuing to confuse the record of what actually occurred in the Illinois Trial Court, the petitioners claim that St. Sava's "legal spokesman", Bishop Irinej, testified in Illinois in "his capacity" as president of St. Sava's Board of Directors.

There is nothing in the trial court's record to establish that Bishop Irinej, Bishop Dionisije or any other witness testified in the Illinois Trial Court in any capacity "on behalf of St. Sava." The Court of Appeal correctly noted that Bishop Irinej's trial testimony did *not* identify St. Sava as a diocesan asset (App A at p. 28). Indeed, as this Court noted, the issues in the Illinois Litigation were the identity of the true bishop and the propriety of the reorganization of one diocese into three. Because these were the only issues being litigated, the petitioners have failed to offer, and cannot offer, any explanation why Bishop Irinej, Bishop Dionisije or anyone else would have occasion to testify in Illinois in any capacity on behalf of St. Sava. No such representative capacity is mentioned in any of the pleadings before the Illinois Trial Court and none existed.

III.

THE REMAINING ISSUES CONFIRM THE CORRECTNESS OF THE COURT OF APPEAL DECISION

In their shotgun approach to the issues, petitioners suggest holdings that courts did not make at the same

time as they ignore the realities of the record on which the California Court of Appeal based its decision. In addition to the compelling reasons discussed above for allowing St. Sava to have its day in court on remand, there are several subsidiary issues warranting denial of the Petition For Writ of Certiorari.

On the issue whether St. Sava's "representatives" were before the Illinois courts, the California Court of Appeal correctly noted that the captions of the Illinois pleadings did *not* designate either Bishop Dionisije or Bishop Irinej in corporate capacities on behalf of St. Sava (App A at p. 4). The decision not to do so was obviously that of petitioners herein as authors of those pleadings and captions, and it is too late for them to second guess their litigation tactics now.

The California Court of Appeal correctly noted that Bishop Dionisije did not raise the contention that St. Sava is autonomous for the first time until his 1979 appeal to the Illinois Supreme Court (App A at p. 6), that is, "until his battle for control of the diocesan empire had been lost" (App A at p. 24). Thus, there cannot be a finding that Bishop Dionisije "actually and efficiently" represented the interests of St. Sava in Illinois, when, as acknowledged by the Illinois Supreme Court in 1979, he did not assert the autonomy of St. Sava in his answer to pleadings filed in Illinois (App A at p. 8) and he was too late in doing so for the first time 16 years later on his fourth and final appeal.

Petitioners argue that St. Sava cannot now seek to assert its independence when it failed to do so during the Illinois Litigation. This begs the question, however, since,

as a nonparty, St. Sava was not in a position to assert anything in the Illinois Litigation and Bishop Dionisije had no incentive to do so on its behalf.

St. Sava was in an adversarial relation with Bishop Dionisije ever since he first tried to appropriate the Jackson Property for the Diocese in 1961, only to be taken to the woodshed and ordered by the Diocesan Council to convey the property to St. Sava [C.T. 1902, 1919, 1938, 2275 and 2281]. With Bishop Dionisije having no incentive to champion St. Sava's autonomy, as a matter of fundamental fairness and due process of law, St. Sava cannot be adversely affected by his self-serving actions or inactions.

Contrary to petitioners' suggestion that St. Sava's Articles of Incorporation completely bind St. Sava to the Diocese, such is true *only in matters of faith* [C.T. 2006, Ex. B]. The Articles of Incorporation are devoid of *any* requirement of temporal or property ties to the Diocese. Contrary to petitioners' suggestion that St. Sava was a mere shell which did not function separate from the Diocese, the record was replete with substantial evidence of St. Sava's autonomous activities from 1963 through the mid-1970s [C.T. 1575 and 3013-3037].

CONCLUSION

Despite the context of historically related litigation commencing 28 years ago in Illinois which eventually reached this Court, *this* appeal is of an ordinary, garden variety summary judgment. The record in the trial court was replete with disputed factual issues material to the parties' claims. When the trial court shirked its obligation

under California Code of Civil Procedure § 437c to review that record, the Court of Appeal did so instead. The ensuing 42-page opinion merely reverses an erroneous summary judgment due to the presence of triable issues of material fact which precluded summary judgment as a matter of law.

The Petition for a Writ of Certiorari should be denied since there are no special or important reasons under Rule 10 to grant review.

Respectfully Submitted,

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